United States Court of Appeals

for the Second Circuit



TRANSCRIPT

75-7061

UNITED STATES COURT OF APPEALS

for the

SECOND CIRCUIT

TRINITY EPISCOPAL SCHOOL CORPORATION and TRINITY HOUSING COMPANY, INC.,

Plaintiffs-Appellants,

ROLAND H. HARLEN, ALVIN C. HUDGINS and CONTINUE,

Intervening Plaintiffs-Appellants,

v.

GEORGE ROMNEY, SECRETARY OF DEPT. OF HOUSING AND URBAN DEVELOPMENT, S. WILLIAM GREEN, REGIONAL ADMINISTRATOR, DEPT. OF HOUSING AND URBAN DEVELOPMENT, U.S. DEPT. OF HOUSING AND URBAN DEVELOPMENT, CHARLES URSTADT, COMMISSIONER OF HOUSING AND COMMUNITY RENEWAL, N.Y. STATE DIVISION OF HOUSING AND COMMUNITY RENEWAL, THE STATE OF NEW YORK, JOHN V. LINDSAY, ALBERT A. WALSH, HOUSING AND DEVELOPMENT ADMINISTRATION OF THE CITY OF NEW YORK, THE CITY PLANNING COMMISSION OF THE CITY OF NEW YORK, DONALD H. ELLIOTT, WALTER MCQUADR, IVAN MICHAEL, GERALD L. COLEMAN, CHESTER RAPKIN, MARTIN GALLENT, ABRAHAM D. BEAME, SANFORD D. GARELIK, PERCY E. SUTTON, ROBERT ABRAMS, SEBASTIAN LEONE, SIDNEY LEVISS, ROBERT T. CONNER and THE CITY OF NEW YORK,

Defendants-Appellees,

STRYCKER'S BAY NEIGHBORHOOD COUNCIL INC.,

Intervening Defendant-Appellee.

TRANSCRIPT

(Volume VI of IX - Pages 2357-2833a)

DEMOV, MORRIS, LEVIN & SHEIN
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TRINITY EPISCOPAL SCHOOL CORP,
et al

against 71 Civ. 4315

GEORGE ROMNEY, et al

May 8, 1974
10:00 A.M.

(Trial resumed)

THE COURT: Please proceed.

D I N A H S O U R S , resumed.

MR. MORRIS: May I have one or two more questions, your Honor?

THE COURT: You understand, Mrs. Sours, you are continuing with your testimony under oath?

THE WITNESS: Yes.

DIRECT EXAMINATION CONTINUED

BY MR. MORRIS:

Q Mrs. Sours, when you altered the ground floor level unit of the building, did you plan on having someone other than an outside tenant to live there?

A Yes, my mother was living in the back apartment.

Q Will you tell us when that occurred and what happened with respect to your mother's occupancy of that unit?

A Well, this was after we had renovated. That would be after 1969. She visited once or twice and decided it was not for her, there was too much noise and dirt and unpleasantness in the neighborhood and so she decided not to come and live there.

Q Was that after the squatters came in that you testified to?

A Yes, she shifted --

THE COURT: Yes is the answer.

Q Did she look over the area before making her decision?

A Yes.

Q Mrs. Sours, there has been testimony in this case that some of the brownstone owners have decided to sell their brownstones in view of conditions in the neighborhood. Would you tell the Court what your position is with respect to that?

A Well, I feelt that we will stay as long as the City goes ahead with its original commitment, that we are very much involved in the neighborhood and would like to stay, but if they do not go ahead, then we will

have to consider moving, I think.

THE COUPT: Go ahead," what do you mean by that?

THE WITNESS: Go ahead with their original commitment to us.

THE COURT: What do you mean by that?

THE WITNESS: 70 percent and 30 percent.

Q But at the present time you have made no attempts to sell your brownstone?

A No, we are waiting to see what's going to happen.

MR. MORRIS: That's all.

MR. LAND: I cleaned off the blackboard so we might draw a map.

THE COURT: Fine.

CROSS EXAMINATION

BY MR. LAND:

Q While waiting for this to dry, I will put up a little map of the area.

Mrs. Sours, you bought your brownstone at 128 West 88th Street in 1967, is that correct?

A Yes.

Q What month was that, if you can remember?

A December.

Q Okay. Prior to that time I assume that you, your husband and your children visited the area to see what was there, is that correct?

A Yes.

Q For how long a period of time prior to purchasing the brownstone did you make visits to the west side area?

A To the best of my recollection, perhaps the earliest visit that we made there was the summer before, perhaps. I am not absolutely certain.

Q The summer of '66?

A No, '67.

Q So for a period of approximately five or six months you became familiar with the area?

A To the best of my recollection, yes. I can't remember when we first visited.

Q In becoming familiar with the area, did you walk around the blocks of the Urban Renewal area?

A Not the entire Urban Renewal area but a good section around 88th Street, where we were interested.

Q In other words, you were interested --

A For instance, on 86th, but we didn't walk up and down every single street.

Q Did you have occasion to go in some of the

shops that there were to see if the community facilities would be sufficient, such as you could buy your groceries and take care of your cleaning needs and go out to dinner and that sort of thing in the area; did you check that out?

A I remember the grocery store but I don't the grocery store but I don't remember the others.

Q Okay. I presume what you found there in terms of community needs was satisfactory for you and your family?

A Yes.

Q How about transportation facilities? Do you use a subway in the area?

A No, my husband works in Wall Street.

Q How about the park situation? Do you recall seeing any of the parks in the area, any which you use?

A Of course, I knew Central Park was there.

Q Do you and your family often go over to Central Park on the weekends?

A Yes.

Q For picnics?

A Not picnics. We bicycle and walk there.

Q And that is a pleasant experience that you enjoy?

A Well, yes. That was one of the reasons why we moved to the City. We used to bring our bicycles in from New Jersey.

Q To Central Park?

A Yes.

Q I would like to draw a schematic map of the area in which you live, at least try to do that. I will draw a line here to represent Central Park, which is on the east side, and then I presume -- let's see. You live on what -- 88th Street?

A Between Columbus and Amsterdam.

Q Let's call this Central Park West, and this is a north-south street bordering on the park. The next street over would be Columbus, right?

A Yes.

Q And this avenue here would be Amsterdam, right?

A Yes.

Q Can you see this map all right?

A Yes.

Q Okay. And the Urban Renewal area is contained between Amsterdam and Central Park West, running north and south, for approximately ten blocks, is that right?

A Yes.

Q And you live on 88th Street?

A Yes.

Q And that is the most southerly part of the Urban Renewal area.

A It's in the third stage actually and goes to 87th Street.

Q This is 87th, 88th, 89th, 90th, 91st, 92nd and it continues up for about six more blocks. I don't have room right here.

You will on 88th Street between Amsterdam and Columbus, is that correct?

A Yes.

Q On the south side of 88th Street?

A Yes.

Q And it is 120. I presume it would be about one-third of the way in from Columbus?

A Yes, roughly.

Q So your home is right here and that's 120.

You know Dr. Fine, where he lives?

A Yes.

Q He lives, I presume, right across the street from you, is that correct?

A Yes.

Q And Mrs. Liebert, she also lives right across

the street from you, does she not?

A Yes.

Q Just to the right of Dr. Fine, is that right?

A Yes.

MR. LAND: Am I writing large enough so the Court can see this?

THE COURT: Oh, sure.

Q You testified that some of the buildings on 88th Street are now occupied by squatters. Could you tell me where those buildings are located on this map? Are they right here?

THE COURT: Don't do that. Let her go down. She has the intelligence to answer your questions.

Before you mark it, Mrs. Sours, will you be sure you understand what it is he wants so we don't have a lot of conversation.

Q I want to know where the squatters are.

A There is another house here owned by another couple.

THE COURT: Is that a squatter, madam?

THE WITNESS: No. Then from there to the corner.

THE COURT: Put a zero, if you don't mind, to distinguish.

(Witness writes)

Q In other words, we have Dr. Fine's house and then to the right of that Mrs. Liebert's house, then another privately owned I assume renovated brownstone and then to the right of that to the end of the block we have the squatter houses.

A Yes.

THE COURT: How many houses, Mrs. Sours, would that be?

THE WITNESS: About five. They are all together. There are four and then there is one that goes on the corner.

MR. LAND: I will put a 5 here indicating 5 squatters.

THE WITNESS: That is roughly.

Q Are there any other squatter houses on your block that you know of?

A I don't think so. I think the house that is on our side ofthe street, in other words, on the south side, which is being emptied now, is not occupied by squatters.

Q Let me ask you this: As to all the other houses on the north and south of 88th Street, are all the other houses fully renovated or in the process of

being renovated?

A No.

Q Approximately how many houses are fuly renovated?

A I wouldn't be able to tell you actually. I'm sorry.

Q Other than the squatter houses, is it an area in which there is not substantial renovation?

A Yes, there are many renovated but there are some that aren't.

THE COURT: Keep your voice up, please.

THE WITNESS: Sorry.

A There are some that are rooming houses that haven't been renovated.

Q When you were walking around the area -- and I presume part of the time with Mr. Haldenstein, who was your broker, is that correct?

A Yes.

Q -- did you come to know whether there were any public housing projects within the Urban Renewal area?

A Yes, there is one at the end of our street.

Q It sits about like this,does it not?

A Yes. On the corner of 88th and Amsterdam.

MR. MORRIS: Close to the corner?

THE WITNESS: Yes.

MR.MORRIS: You don't show it going to the corner.

MR. LAND: Government's Exhibit S, your Honor, indicates that this particular low income housing project has 153 units and it was completed in August of 1965.

Q You knew it was completed when you were buying your house and was fully occupied?

A Certainly.

Q Do you know of any other low income housing projects in this area?

A You mean right around our street there?

Q Any which you feel affect the desirability of you living in the neighborhood.

A I am sorry. I don't understand you.

Q Any low income housing projects of which you are aware and which you believe affect the desirability of living in that neighborhood?

A When we were looking we understood there would be 30 percent. That is why we chose the neighborhood. We wanted to move into a mixed neighborhood.

Q Do you know of any other low income housing

projects in the neighborhood of which you are aware and from which you receive some feelings either of hostility or friendliness?

THE COURT: As of now he means, at the present time?

THE WITNESS: Oh, I see.

A Well, in all the houses there are a certain number of low income apartments.

Q I am asking about housing projects, multiple story buildings similar to the one on the corner of Amsterdam Avenue between 88th and 89th Streets. Do you know of any others?

A Yes. There is one on Amsterdam at about 90th I think, something like that.

Q On Amsterdam?

A Yes. I don't know exactly where. I think it's about 90th Street. Perhaps 90th and 91st and 92nd.

MR. LAND: There is, according to Exhibit S, the Stephen Wise Housing Project located between Amsterdam and Columbus between 90th and 91st.

THE WITNESS: There is also one on Amsterdam on the west side.

Q On the west side?

A Yes. I am sorry. I don't know the exact

street.

MR. LAND: According to Government's Exhibit S, this unit contain 399 low income units and was completed also in 1965.

Q Do you know of any other low income housing projects within this neighborhood?

A Just the one I mentioned.

Q One somewhere over in this area here?

A Yes. Then of course we have other squatters in the old buildings in our neighborhood on the corners.

Q Here?

A Yes, between Columbus and Central Park West.

THE COURT: In addition to the five you testified about before?

THE WITNESS: Yes.

THE COURT: What do you want to add now?

THE WITNESS: On the corner diagonally across from our squatters there on Columbus and 88th, that's low income -- you know, they are old buildings, not new buildings.

Q Here?

A Yes.

Q On the southeast corner --

A And going all the way around that corner to

87th Street.

Q The entire area bordering Columbus Avenue between 87th and 88th Streets are more squatters, on the east side?

A Right. It is a mixture of squatters, I think, and low income.

Q Are there any other low income housing projects of which you have knowledge?

A Do you mean new buildings or the old ones?

Q Similar to the one you described at the end of your block on Amsterdam Avenue and the one you recognize as the Stephen Wise apartments between 90th and 91st. Do you know any others?

A I think Leader House now is filled pretty much with low income isn't it?

Q Is that in your mind a low income housing project?

A No, not specified as such, but I believe that it has over the 30 percent in it.

Q I am asking you about those which are low income housing projects designated as such.

A Let me think. Are those cooperatives as well as rental? You mean any sort of thing?

Q I mean apartment buildings which are occupied

solely by persons of low income. Do you know of any others?

A There are some more of the old buildings between 87th and 88th.

Q I am asking about the large apartment buildings similar to the type at the end of your block on Amsterdam Avenue between 88th and 89th, high-rise, recently constructed, low income housing projects.

Do you know of any others?

A New ones. Let me think. I'd have to look at my papers. I'm afraid I can't remember offhand which ones they are. Those are the three that stick in my mind now in our neighborhood.

THE COURT: Let's go to the next question.

MR. LAND: Your Honor, for the record let me show --

THE COURT: I don't know what you are after, I don't want to interrupt you, but her declaring them as low income doesn't create them. They are there. There is no dispute on that. I should think you ought to supply it and let's have it over with, unless you want to test her out as to whether she knows what she is talking about. That is a different thing. If you haven't that in mind then why waste time trying to get

from her conceded facts, the existence of low income houses in that area. You just tell us and that is the end of that.

MR. LAND: The balance of the two which I have in mind, there is one on Site 25 between 91st --

THE COURT: Just put it in.

MR. LAND: Right up here. This contains a total of 168 units and was constructed in 1965; and there is a further one on 94th Street between Amsterdam and Columbus Avenue, also constructed in 1965, Site 15, but the map won't hold it.

THE COURT: All right.

MR. MORRIS: Why don't you show also, since we are stating it factually, that the house on the west side of Amsterdam Avenue that Mrs. Sours testified to is up at 93rd Street and it is the de Hostos House on the west side of Amsterdam. It belongs up on 93rd.

THE COURT: Is that right, Mrs. Sours?

THE WITNESS: Yes. It's on the west side.

THE COURT: That is the one you had in mind when you testified before?

THE WITNESS: Yes.

MR. LAND: Okay.

Q Mrs. Sours, yesterday you testified that

there were bugle noises and music coming from particular buildings which you found exceptionally irritating. Did those noises come from these squatter houses on the corner of 88th Street --

THE COURT: The group of five, that is the way to identify it.

A Yes.

Q You testified that the garbage was aimed at you coming from some building. Did that garbage also come from this group of five squatter buildings?

A It happened many times but from that side and from our side of 88th Street where they moved over. When the sun is over there and they don't want to sit in the sun, so they move across the street into the shade. So it happened from the stoops across the street.

Q In other words, from the south side of 88th Street?

A Right.

Q What is located there?

A It's another building that is due to come down. There is also a community center.

Q But the people who threw the garbage at you were the residents of the five squatter apartments?

A Yes.

Q You also testified that persons spit at you. Were they also people who resided in the five squatter buildings?

A Yes.

Q You testified that there were lewd comments made to you directed to you personally. Were those coments made by persons who reside within the five squatter buildings?

A Well, sometimes, but as I said, my daughters walk on Columbus and Amsterdam --

Q I am talking about lewd comments made to you. Were they made to you by the persons who resided in those five?

A Sometimes and sometimes by people hanging around the neighborhood.

Q You don't know where they reside?

A Either there or they hang around between 87th and 88th.

Q To your understand, they are to some extent connected with the five squatter buildings?

A They are familiar faces.

Q Familiar in terms of the five squatter buildings?

A Sometimes, yes.

Q You also testified that there was an incident in which a man grabbed you between the legs?

A Yes.

Q Tell us when that occurred.

A It was last week, but I don't remember the date.

Q Where were you? On what street?

A I was walking on 88th Street turning to go up to Columbus.

Q Were you on the north side of 88th Street?

A No, I was on that corner where the zero is. I was coming around from 88th going up to Columbus. He came across Columbus Avenue.

Q From the west side of Columbus?

A From the east side of Columbus Avenue. And turned in toward me. There was nobody else on the sidewalk. So there was no reason for him to even come near me. He walked right over to me.

Q Did you recognize that gentleman as one who lived in the squatter buildings?

A I don't know where he lives but I had seen him before.

Q Where had you seen him before?

A Columbus Avenue.

Q In the general vicinity of 88th and 89th Street?

A Between 88th and 86th, I would say.

Q You don't know where he resides?

A No.

Q Was he a black man or a white man?

A Halfway in between, you know. He was Puerto Rican.

Q What was his approximate age?

A I'd say in his forties, thirties or forties.

Q Did he say anything to you?

A No, he just laughed when I hit him.

Q Okay. And he stopped?

A He was walking. He kept walking and I kept walking. I went like that and turned around and told him what I thought of him. She he laughed.

Q Do you think maybe if he was walking he accidentally bumped into you?

A Absolutely not. There was nobody else on the street. He came right to me. There was no reason for him to come near me.

Q Did he actually touch you?

A Yes. He went like that (indicating)

Q You testified that there were a number of rocks that were thrown from windows at you. From what buildings were these rocks --

A Not windows actually.

Q You testified a number of rocks were thrown out of buildings at you?

A No. I think they were from the lots. We have empty lots where buildings have been torn down and nothing has happened. I think they pick up the rocks from those lots and throw them.

Q Who is "they"?

THE COURT: I am sorry. You wanted to draw something. I allowed you to do it. Are you through with that?

MR. LAND: Yes.

THE COURT: Then will you go to the lectern so she will raise her voice in order to reach you.

Q Who was the "they" that threw the rocks?

A I didn't catch them.

Q Did you see them?

A I saw a group.

Q Were they children or adults?

A A mixture.

Q Black or white?

A All. Puerto Rican and black, I would think.

Q Do you know if any of those persons were persons who reside within the five squatter buildings?

A Some of them.

Q You testified that there was a lot of noise on the weekends after 11:00 o'clock p.m. From what buildings did this noice eminate?

A From the five squatter buildings.

Q You testified you saw a large congregation of people. Where were these people congregating in terms of the map on the blackboard?

A Well, either in front of the squatters -- mainly in front of the squatters' buildings, but, as I say, when it gets hot and sunny they move across the street to our side.

Q You testified, I believe, that between the time you moved into your building and the advent of the squatters that you and your family were personally satisfied with the living conditions in the West Side Urban Renewal area, is that correct?

A It seemed to be what we expected when we moved in.

Q What did you expect?

A Building going on and the Urban Renewal business

to be going ahead with the buildings coming down.

Q Let me ask you this question: Prior to the time the squatters came in, did you have any of those incidences, irritating bugle noises, spitting upon you, garbage being thrown at you, grabbing at your person by other persons, lewd commends, rock throwing, congregations of people? Did any of those incidences happen to you prior to the time the squatters arrived?

A No. There may have been a comment or two but none of the other things.

nd tl

Q And the comment was something which you did not think substantial or serious?

A Not so much to myself. I do object when they grab and make comments at my daughters.

Q That happened after the squatters moved in?

A Yes.

Q In other words, I get the picture then that you testified what you are now experiencing is purposeful irritation, but you had no such purposeful irritation prior to the time the squatters arrived, is that correct?

A Yes. I think that after the demands made by the squatters and various other groups in the neighborhood, the brownstone owners -- this is my own personal opinion -- were sort of pointed out as the enemies, is the ones who were against any low income housing and against public housing, which was not true.

Q Did you get that same type of feeling as to the people residing in the public housing project on Amsterdam Avenue on the end of your block?

A No.

Q Do you have any friends that reside in that public housing project?

A I know a family. I would not say they are close personal social friends.

Q Do they have children that play with your children? Is that how you know them?

A They don't play with my children. They are much younger, but I know the children.

Q Are they black or white?

A Black.

Q Can you give us your evaluation of that family?

A How do you mean?

Q Is that a type of family which you feel is causing the difficulty you are now experiencing?

A No.

Q Could you describe what the squatter buildings look like? Are the windows broken, are the railings missing, is paint peeling? When you look in the windows does it look like a state of disarray with broken furniture over the floor, or bare or missing light bulbs, where you can see a state of total disorientation?

A I have never been inside.

Q Have you looked inside?

A I can see the windows because we live opposite.

Q What do you see?

A Dirty windows, the garbage overflowing, because they don't seem to have a sufficient number of garbage cans. They are not well cared for.

Q What do you mean by that?

A They are not swept, cleaned properly. The glass is broken on the doorways and that type of thing. They are not well cared for.

Q Do you see the same things as to the public housing project at the end of Amsterdam Avenue?

A No.

Q The windows are clean, to your knowledge, and you don't see collections of garbage out front?

A No.

Q You don't see a general dirtiness that you see in the squatter buildings?

A No.

Q Can I assume from your testimony that your immediate concern for yourself and your family is the unpleasantness which you attribute in almost every instance to the people who reside in the squatter buildings?

A No.

Q There is other unpleasantness as to people who do not reside in the squatter buildings?

A Yes.

THE COURT: Amplify on that.

What did you mean by your last answer?

THE WITNESS: I meant it is not just squatters.

I don't know where a lot of these people live. They are not just squatters. They are people in the neighborhood.

Q But many of these instances to which you have testified on direct examination, when Mr. Morris questioned you, occurred prior to the time the squatters arrived?

THE COURT: You have covered that. She said outside of one or two instances that was all.

Am I not right?

THE WITNESS: Yes.

Q You testified that you have no current inention to move from the area unless the City does not go ahead with the plan, is that correct?

A We are waiting to see.

Q What specifically are you waiting to see?

A We are waiting to see whether or not the City will go ahead with its original promise to us.

Q What was that original promise?

A Have the 2500 units of low income public housing and the 30 per cent and 70 per cent business.

Q Does your expectation of the future have anything to do with what will happen to the five squatter bu8ildings?

A That section is due to be torn down and a school is to go in there. The public school is supposed

to go in there actually.

Q What you are waiting to see then, in part, is whether the five squatter buildings are demolished and a public school is constructed on that site?

A That was part of the urban renewal plan.

Q You recognize of course that completion of projects takes some time, do you not?

A Yes.

Q You also recognize that the particular street on which you live was designated as the last area to be redeveloped? Are you aware of that?

A Yes.

Q If the five squatter buildings are demolished and occupants relocated, and if a public school is built on that location, are you of the feeling that the types of problems which you are now experiencing will substantially diminish?

A As I said before, I believe that they should go ahead and go through with their original promise and then it would be the type of neighborhood that we planned to move into originally.

Q That being one without the types of problems youhave recently experienced?

A Hopefully.

MR. LAND: I have no further questions.

THE COURT: Mr. Gold.

CROSS-EXAMINATION

BY MR. GOLD:

Q Mrs. Sours, are you familiar with the properties at 138, 140 and 167 West 88th Street?

A 140 I know as a building you are mentioning. I am not sure which one 138 is.

Q Are you aware that those properties are now being rehabilitated?

A Yes, 140 is.

Q You are not sure on 138?

A What were the other two?

Q 138, which is right next door.

A No, I don't know about that.

Q And 167 which is across the street.

A I can't visualize those.

Q They are on your block?

A Yes.

Q Prior to your living in Woodcliff Lake, New Jersey, where did you reside?

A Pensacola, Florida.

Q Would you consider your residence in Pensacola to be living in an urban area?

A My husband was in the Navy then, so it was --

Q Woodcliff Lake, New Jersey, is that considered an urban-type of area?

A No.

Q Suburban type?

A Yes.

Q Did you have, prior to coming to the West Side of Manhattan, any experience living in an urban-type of area?

A Yes.

Q Where was that?

A In New York City.

Q Where in New York City?

A When my husband and I were first married we lived on York Avenue and 68th Street, I think it was.

Q How many years ago was that?

A Seventeen. I think so. 1957.

Q That was on York Avenue. Was that in a high-rise building?

A No.

Q What type of building?

A Sort of a tenement building. It was a hospital building. My husband was interning at the time and it was a low rental building opposite the hospital.

Q Staff residents?

A Some, not entirely.

Q Where is your husband's office located now?

A 86th Street, in the Hotel Atlas, East 86th Street.

Q And what cross street?

A Back from Fifth Avenue.

Q You said to Mr. [illegible]nd he walks from his house to his office.

A Sometimes. Sometimes he takes the bus.

Q It is convenient to get from West 88th and Columbus to his office?

A Yes.

Q More convenient than Woodcliff Lake?

A Yes.

Q You indicated Woodcliff Lake was very dull.

A I meant really, when we considered bringing up our children there, we felt it was not the type of place we wanted them to grow up in.

Q You came to the East Side for the reason you thought that was the type of place, is that correct?

A Right.

Q And also because your husband was tired of commuting?

A Yes.

Q And for the good cultural things that New York City has and represents?

A Yes.

Q Since you have lived in the West Side Urban Renewal area, that would be from 1969 on, do you feel that your goal of having the children , your children, being involved in a more real world atmosphere has been met?

A Yes. They certainly know far more different types of people than they ever would have met in Woodcliff Lake.

Q And it is not dull as in Woodcliff, New Jersey?

A Certainly not.

Q You spoke of a 70-30 mix that you were promised. Who made that promise, Mrs. Sours?

A I think, as I mentioned yesterday, my husband saw literature by many people. I thinkthe only name that sort of comes to my mind is Mr. Nathan, whom I believe was -- no, forget that. I am not sure what his exact position was. My husband had seen literature put out by City officials.

Q He discussed that with you?

A Yes. We talked about the type of neighborhood that it would be.

Q Do you know what that literature was?

A It was a statement -- statements by City officials.

Q Do you have that with you by any chance?

A I have some.

Q Could we see that?

(Pause.)

A The only ones I have with me are one of the papers given to me by Mr. Morris that I think has already been shown to the Court.

Q Could you tell us what that paper is and if it has a number in evidence?

A It says Exhibit D down at the bottom.

THE COURT: Does it have a date on it?

THE WITNESS: October 9.

Q That is Defendants' Exhibit D?

A Yes. The other one is a Housing and Development Administration joint text by Commissioner Goodwin and Roger Starr.

THE COURT: Has that been put in evidence?

THE WITNESS: Let me look at this. I am not sure.

(Pause.)

These say things like --

THE COURT: All we want to know: Was that one of the papers you examined at the time?

THE WITNESS: These are just ones I have with me.

THE COURT: The question, as I understood Mr. Gold, was what did you examine by way of papers with regard to the 70-30, and 2500?

Your answer so far was that your husband discussed it with you, that you gathered he had read some material.

Mr. Gold wants to know what did you read at the time, if anything, on that subject.

THE WITNESS: I thought you had asked me if I had any papers with me now.

I didn't read them. My husband read them and explained them.

Q Did you ever have any discussion or conversation with any City official with respect to a 70-30 breakdown in the Urban Renewal?

THE COURT: You yourself.

A No, I did not.

Q You, according to your testimony, were much concerned about particularly 88th Street and the corners as you approach Columbus Avenue, is that correct?

A Yes. I am concerned with the whole urban renewal area,but that affects me most.

Q More particularly with y our own block?

A Yes.

Q You indicated that a public school is to go on the corner of Columbus between 88th and 89th Streets, is that correct?

A Yes.

Q Is that, if you know, a replacement for the current PS166?

A I believe it is supposed to be, yes.

Q Do you know the capacity of PS166?

A No. It is an elementary school.

Q When you took title to the brownstone in December of 1967, were you aware of the fact that a public school the size of 166 was to go on Site 40, on that location?

A I believe we were. I believe it was planned then.

Q That was acceptable to you?

A Yes.

Q Are you aware, Mrs. Sours, that the State of New York is going to take over Site 44, which is located on the west side of Columbus between 87th and 88th Streets and Site 41 on the east side of Columbus between 88th and

89th Streets for a State Mitchell-Lama project?

A Yes.

Q Does that please you?

A That they are to be rebuilt, yes.

Q In the very near future?

A Yes, if it is 30 and 70 per cent.

Q If it is 30 and 70 per cent?

A Yes.

Q It is your feeling then that a 70 per cent-30 per cent breakdown in the building makes that building, is that correct?

A I think it is important, yes.

Q Important in what respect?

A Because it was whatwas promised to us originally and because it is the type of thing that I envisaged when we moved there.

Q Does the 70-30 breakdown in a high rise building, as is contemplated for those sites, affect you in your brownstone on 88th Street?

A IN what way?

Q Do the people in that building affect you?

A They would be our neighbors.

Q Would your children be playing with the children in that high rise building?

A Well, they would certainly know them.

Q So that if the breakdown in those buildings was 70-30 you would be pleased?

THE COURT: She has testified to that several times, Mr. Gold.

Is there anything else?

MR. GOLD: Yes.

Q At the time you came to the Urban Renewal area or took title or moved into your house, in 1969, did you ever consider sending your children to PS166?

A No. We went over there and talked to them.

THE COURT: Just answer the question.

A Yes, we did.

Q You did?

A Yes.

Q Can you tell me why they ended up going to private school?

A We felt it would be easier for them moving into the City to go into these particular schools.

Q By the way, did they attend the public school system in New Jersey?

A Yes.

Q They did?

A Yes.

Q You indicated that you are active in the community.

A Yes, fairly active.

Q Tell me in what way you are active in the community?

A Well, I attend all our block meetings. I work on the street cleanups every year. I am a delegate to STrycker's Bay now. I belong to CONTINUE. I have gone to other meetings in the area. I go to all the PTA meetings at all the schools.

Q You mean the schools at which your children attend?

A Yes, two of which are in the neighborhood.

Q Are you an active member of CONTINUE? Would you consider yourself active?

A I am a member. I go to meetings.

Q Would it be fair to say --

A I don't know what you mean by "active." I belong.

Q Are you a member of the board of directors?

A No.

Q Are you an officer?

A No.

Q You go to all its meetings?

A No.

Q Most of its meetings?

A A good number.

Q Would it be fair to say that the nucleus of the active people in CONTINUE live on your block?

A Yes, I would say so. There are some who don't live on our block who are active in it.

Q Dr.Fine, and Mrs. Liebert, at least they are two very active people?

A But there are many others who don't live on our street: Mrs. Owens and Mrs. Hoffman.

Q Do you think that perhaps some of the problems that you have encountered from the five squatter buildings might relate to the fact that you are active in CONTINUE?

A I could not say really, honestly.

Q It is possible?

A You know, that would be reading their minds. I cannot say.

THE COURT: Next question.

Q You testified that your building is in Stage 3, which is the last stage planned to be completed in the area, is that correct?

A Yes.

Q You were aware of that when you took title in

'67 and when you moved in in '69?

A Yes.

Q When you took title in '67, did you investigate the area in Stage 3 to determine its condition at that time?

A Well, we walked around.

Q What did you see in Stage 3?

A In Stage 3?

Q Yes.

A Pretty much as it is now, unfortunately.

Q That was in '67 and it was also true in '69 and that is true now?

A Unfortunately.

Q In '67, when you saw that, you took title to the building anyhow?

A Expecting things to be done a lot sooner than they actually have.

Q When did you expect things would be done?

A I think we thought within the next three or four years.

THE COURT: After you took occupancy?

THE WITNESS: Right.

Q That would be '73 approximately?

A That it would be finished.

Q Based on your examination in '69 that would be

a fair assumption?

A Do you mean did I think the same in '69?

Q When you took occupancy in '69, did you think they would finish in three or four years?

A Yes.

Q All these big high rise buildings?

A Yes.

THE COURT: That is what she said. Y ou could argue she should not have entertained it, but that is her testimony. That is another matter.

Q You have one rented apartment?

A Not any more.

Q Your husband uses that partially as an office?

A He can only use it at the moment one morning a week.

THE COURT: And the rest of the time --

THE WITNESS: He uses his other office.

THE COURT: What else is that particular area used for?

THE WITNESS: Nothing.

THE COURT: Next question.

Q Between December 1967, when you took title, and September of '69 when you moved in, did you come to visit your property often?

A Yes.

Q You walked around the area to see what was happening?

A Yes.

MR. GOLD: I have nothing further.

THE COURT: Mr. Douw, how long will you take?

MR. DOUW: Just a few questions.

THE COURT: Please proceed.

CROSS-EXAMINATION

BY MR. DOUW:

Q I believe you testified in your brownstone, when you purchased it, there were eight tenants in the building?

A Yes.

Q Were those single individuals or families?

A Single.

Q All single persons?

A I believe so.

Q Were they elderly or younger people?

A Younger on the whole, but I am not sure of all their ages. It was just my impression.

Q If I understood your testimony, youhired a person to take care of their relocation?

A Yes.

Q Were you familiar personally with any relocation

rights they might have had?

A This man worked with the City agency.

Q My question is this --

THE COURT: Did you personally know?

THE WITNESS: No.

MR. DOUW: That is all. Thank you.

THE COURT: Is there anything else, Mr. Morris?

MR. MORRIS: No.

THE COURT: You are through with your testimony, Mrs. Sours, and my advice is to get speedily from the immediate environs before y ou are recalled. On your way.

(Witness excused.)

THE COURT: Gentlem en, I think we ought to have a short recess and then I will see you in the robing room with regard to the matter that we took up on Monday, that we have been adjourning, but I think we have to get to it.

(Recess.)

M. P A U L F R I E D B E R G , called as a witness by plaintiffs, being first duly sworn, testified as follows:

THE COURT: Mr. Friedberg, will you keep your voice up so we can all hear you and talk slowly so we can understand you. Only answer the question that is put to you.

Do you understand that?

THE WITNESS: Yes.

DIRECT EXAMINATION

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BY MR. MORRIS:

Q Mr. Friedberg, where do you live?

A 116 West 88th Street.

Q Is that a brownstone?

A Yes.

Q Is that a brownstone that you rehabilitated?

A Yes.

Q What is your occupation, Mr. Friedberg?

A I am an urban designer, landscape architect and educator.

Q How long have you been engaged in that profession?

A Approximately fifteen years, sixteen years.

Q And in connection with that, have you had

anything to do with Urban Renewal programs and Urban Renewal plans?

A Yes, I have.

Q Would you tell the Court briefly what your contact has been in that area?

A I have worked for various cities throughout the country in the implementation of these plans, I have also gone back and reviewed some of the problems that are inherent -- that were inherent in specific plans in cities like St. Louis.

Q Just hold it.

THE COURT: Go ahead.

A Cities like St. Louis where we were requested by the housing agencies there to do a master plan for the ill-fated Pruitt-Igoe project.

Q Is that the public housing project that was demolished?

A Correct. That was a 3400 units of public housing aggregated on a single site and it was all black, all low or no income. It started out as an integrated project with white and black -- supposedly white and black residency and because of the predominance of block in the particular project, it turned all black, and

because also of the level of income, created a type of pathology which is found in a poverty area and as a result eventually had to be destroyed. The people were relocated and the whole project was demolished.

I could go on and name other projects of a similar nature which we have been working on in Boston, in Washington and places of that nature.

Q And have you done many of such Urban Renewal projects?

A Yes. I am considered an expert in this area. Excuse me. Urban design rather than just Urban Renewal.

Q Can you tell the Court approximately how many such projects you have had contact with during your experience?

A That would be very hard. Well over 25.

Q Over 25?

A Yes.

Q Mr. Friedberg, when did you first have contact with the West Side Urban Renewal area?

A Approximately 1962.

Q Is that when the Urban Renewal plan was approved?

A I am not exactly sure. I think it was --

Q It was approved in 1962?

A You asked me my contact?

Q Yes.

A Yes.

Q Is that when you acquired contact with the West Side Urban Renewal situation?

A Yes.

Q Would you tell us what that contact was and how it came about?

A A fried of mind indicated that he was about to buy a piece of property in the west side. I was recently married and desirous of finding a more permanent location in the city. I looked first on the east side and eventually moved to the west side --not moved but looked on the west side, found the area very desirable, found also that I could handle the terms within my means, and asked the real estate brokers to look for a house for me.

THE COURT: What I am particularly interested in is not your conclusions but what you actually did. You said you went to the west side. We have gotten just what you say you maintain under oath are the steps you took.

Did you walk around the neighborhood, did

you examine this, did you exami e that? These are things you must recite. Do you understand?

THE WITNESS: Yes, sir.

Q Also, would you fix the time as of which you are speaking.

A This was I believe the summer of 1962.

THE COURT: All right, go ahead now.

A My fried told me that he was about to purchase a house --

THE COURT: I got that. What did you do?

THE WITNESS: He then took me over to the west side. I was familiar with the west side. I had lived on 82nd Street right after I got out of the Army in 1956. I lived there for a period of about two years.

THE COURT: That is telling me something. Go ahead. I want facts.

THE WITNESS: I found that the west side was a very interesting area and therefore desirable.

THE COURT: Interesting why?

THE WITNESS: It was a diverse area and had a fair amount of amenities and facilities. It was adjacent to the park, Central Park. Therefore that was desirable. It had transportation links to the rest of the city that were extremely good. It was also, as

I said, within my income bracket.

So I then looked on a variety of different streets in the area. I specifically then decided at that time, after looking around Gracie Square and some of the buildings in that area, where I found the price was similar but that the relocation problems were monumental.

I investigated the west side because also I was working with the City professionally. I investigated the options and opportunities in the west side, and those were, one, to buy a brownstone that the City was going to auction, and they eventually did, two, to wait for the City to put these up or to look for a brownstone on my own.

The first step I took when I decided to move into the area was to ask the brokers to look -- a number of brokers, one was Hidalgo, another was Sola, to look for a building for me. I gave them very specific criteria for that building and I asked it be on the park block, I asked it be a certain size, five stories, and so forth.

He called me --

THE COURT: Wait a minute. Next question.

Q What was the period during which you made this

investigation that you described?

A It was about a four to six month period in 1962.

Q You testified that you did some work for the City in connection with the West Side Urban Renewal area.

A That came later. My work --

THE COURT: Please. I told you, when you started your testimony, this is a Court. There are rules of law. I can't let you go on this way. The Judge is not supposed to do that. You are supposed to answer the question and only that and don't volunteer any testimony. If you are asked to explain, that is another proposition. You see?

THE WITNESS: Yes.

THE COURT: You take the pending question. The court reporter is going to read it to you. Just listen to it for a moment.

Would you mind doing that, Mr. Court Reporter?

(Question read)

THE COURT: Now, that came later. All we want to know is when did you do something in conjunction with the City?

THE WITNESS: Subsequent to --

THE COURT: When, a date?

THE WITNESS: Sir, I have done almost ten projects in the area. I don't know the dates. I would have to go back and refresh my memory.

THE COURT: That is what your lawyer should have had you do, I suppose. At any rate, it's not done.

Next question.

Q When did you first start doing work for the City?

A Right after the Urban Renewal plan was accepted and as soon as the first Mitchell-Lamas were in a planning stage.

THE COURT: As you figure it, it would be what date?

THE WITNESS: 1963, 1964.

Q 1963 or 1964?

A Right.

Q After you made your investigation of the area, did you also look into the terms and conditions of the Urban Renewal plan that had been approved by the City or federal governments?

A Yes, sir.

Q And did you familiarize yourself with the

terms of that plan?

A Yes, sir.

Q And after having looked at the area, examined it and familiarized yourself with the terms of the Urban Renewal plan, what did you then decide to do?

A To buy a brownstone.

THE COURT: Next question.

Q How did you go about buying a brownstone?

THE COURT: What does that mean, how did he go about it?

Q Did you go to a broker?

A Yes.

THE COURT: Next question.

Q Were you shown various properties in the area?

A Yes.

Q And as a result of that, were you shown a property which you decided you would buy?

A Yes.

Q And would you tell us when that occurred?

A 1962.

Q You made the decision to buy in 1962?

A Yes.

Q And did you in fact buy a property at that

time?

A Yes.

Q And would you tell us where that property was located?

A 116 West 88th Street.

Q And what did you proceed to do with that property once you acquired it?

A I held it in the condition that it was at for approximately four years. I have the date.

THE COURT: Give us the date, please. From when to when?

THE WITNESS: Purchased 1962, renovated 1966.

Q And what did you do, relocate the tenants out of it, the old tenants that were in the building before renovation?

A I relocated them at the time I was about to renovate.

Q Yes. And did you proceed with the renovation of the property?

A Yes.

Q And how long did that take, would you say?

A About four months.

Q And did you then occupy the property, after the rehabilitation, yourself?

A Yes.

Q And how long did you occupy it for?

A To the present. I am still occupying it.

Q You still live there?

A Yes.

Q Can you give us an idea of approximately how much you spent in the acquisition and the rehabilitation of the property?

THE COURT: Just a general figures.

A About $70,000.

Q That included both the cost of acquisition and the cost of renovation?

A Yes.

Q Would you describe the property as you renovated it and as it is at the present time?

A As I renovated it or prior?

THE COURT: After the renovation, which you said took place in '66 and lasted for about four months, what have you got there?

THE WITNESS: I have a two-family house with one rental unit.

THE COURT: Thank you.

Q How many stories in the building?

A Four.

Q And how wide a frontage does the building have?

A Fifteen and a half feet.

Q Which floors are rented out and which floors do you use for your own use ?

A Basement floor is rented out and the remaining three fllors are for my own use.

Q Do you have a tenant there at the present time?

A Yes, I do.

Q Has it been tenanted all the way through?

A Yes, it has.

Q Now, did there come a time when you did some work for the City of New York in connection with the West Side Urban Renewal project?

A Yes, sir.

Q And would you tell us what that was and when it occurred, approximately?

A The work -- you asked me what it was or when it was?

Q When it was and what it was you did.

THE COURT: Was it the same? Let's do it this way. In a general way, was the work that you did for the City the same type of work? What did you do for

the City?

THE WITNESS: That is what I was about to explain. Consultant to architects working in the design and development of architectural plans for the site on 96th and Amsterdam, 94th and Columbus on the west and east side, 94th between -- New York City Housing Authority, 94th between Columbus and Amsterdam, 88th and Amsterdam, 88th and -- on the east side of Columbus, 97th between Columbus and Central Park West, 97th between Columbus and Amsterdam, 90th and Columbus.

I have also done the playground at P.S. 166 on west 89th Street and the plaza on 94th Street between Columbus and Amsterdam.

THE COURT: But all of those projects, what you did was as a consultant to the work that was being done by the architects?

THE WITNESS: Correct.

THE COURT: Is that right?

THE WITNESS: Yes.

THE COURT: In other words, you continued to be the consultant from the commencement to the termination of these projects?

THE WITNESS: Correct, sir.

THE COURT: Am I right?

THE WITNESS: Correct, sir.

THE COURT: What you haven't got are the exact dates for the five projects?

THE WITNESS: Correct. They span the entire time and are still proceeding now.

THE COURT: Beginning with the year 1963 or 1964?

THE WITNESS: Yes.

Q Until the present time?

A Yes.

THE COURT: That is what he said.

Q When did you move into the brownstone that you rehabilitated?

A 1966, but I moved into the area earlier. I renovated two buildings in this area.

Q Would you tell us about that?

A After buying this building, the one I am presently living in, I realized it was too small for me to have my office in. I then proceeded to buy another brownstone, 125 West 88th Street, and I renovated that immediately in 1963. I lived there until 1966, and I worked there.

Q Do you still work there?

A No. I subsequently sold the building.

Q You sold the building?

A Correct.

Q When did you move into the one on 88th Street that you presently occupy?

THE COURT: 116 West 88th Street.

Q 116.

A Right.

Q When was that?

A 1966.

Q 1966?

A Yes.

THE COURT: After the renovation?

Q After the renovation, is that right?

A Correct.

Q In the course of your experience which you have described with the West Side Urban Renewal area and going up to the period of 1970, did you observe what was happening with respect to that area in terms of the tenancy, the occupancy and what was being done in the area?

A Yes.

Q And would you tell us what you observed, and give us approximate times for your observations.

A We were fully aware of what we were getting

into when moving into this area, that it was a mixed area. At the time we moved in it was predominantly low income. We accepted that with the expectation that the area was going to eventually become a mixed income area with a reasonable ratio of low income to middle income. This was extremely important due to my prior information and experience that I gained through my profession. And also it was substantiated by the investigation that I personally did with various city officials that I knew professionally or personally.

THE COURT: Mr. Friedberg, I know that it might be a little difficult for a witness to understand what he cuts short and when does he expand.

Now is your opportunity to expand. Explain it to me so that I'll understand it.

Suppose you were giving me an architectural drawing. To you one glance tells you a whole story. It would take me five hours to understand it.

So please explain these things to me.

THE WITNESS: My personal commitment and professional commitment was to move into an integrated area. My desire was to stay in the city. We were living in the city and we wanted to stay in the city. The west side offered us both opportunities, an opportunity

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to stay in the city from an economic standpoint because the price and everything else was within my range.

Secondly, because of our commitment to the idea of integration we wanted the west side. I went and I reviewed this information with people like Sam Ratensky, who was one of the major planners for this area who I knew personally as well as professionally. I spoke also to Lou J. Nathan when he became the head of the HDA when I was also doing the playground on 89th Street. I spoke to Mr. Lauria, Hugh McChellan, Bob Benapy to get the necessary information as to the eventual outcome of the plan, also to get certain commitments, that this was the objective of the City, to create a viable urban community that had the economic diversity.

I knew from experience that in such communities you had to have a lower percentage of low income in order to maintain the middle income in the area. That's why I first looked elsewhere and, once having gotten this commitment, I decided on this area.

THE COURT: May I interrupt you?

THE WITNESS : Surely.

THE COURT: You said you had some experience on that subject and disappointment.

THE WITNESS: Not personally. This was through my work and studies.

THE COURT: I don't care whether it was personal. But through your work, your observation, you said you had theretofore had some experience with that whole idea, the whole concept of integration, did you not say so?

THE WITNESS: Yes.

THE COURT: What do you mean by that?

THE WITNESS: We found in certain Mitchell-Lama projects in the city where they looked for a racial, not an economic balance, looked for a racial mix, that they had extreme difficulty. This was the State Division of Housing. They had extreme difficulty in maintaining that in areas that were not initially racially mixed. Areas that had a predominance of blacks in them would normally go black, even though the objective of it and the aim was to have an integrated project. You could not induce middle income white to go into a predominently black area. It was extremely difficult.

Moreover, it was not healty for the area -- it was not healty for most developments when, based on studies of people like Milgrim and Deerfield, when

they tipped the balance. His balance was somewhere between 17 and 20 percent. And here again, where you had an economic homogenous group but you had racial differential.

THE COURT: Let me interrupt you. I got enough on that for the time being.

With those experiences, you thereofre, when you went to the west side and concerned yourself with the purchase of 116 West 88th Street, what did you envision with regard to that same subject matter without my leading you? What did you look for, what were you told, et cetera?

THE WITNESS: One, I was told that the area would have upper income, middle income and lower income in percentages, approximate percentages, of 25 percent low income, 50 percent or more upper income -- I mean middle income, and the remainder in upper income. The upper income I was told initially was somewhat tentative, they were not quite sure. I could understand that because from a real estate standpoint you were trying to attract into an area that had heretofore not had upper income.

Secondly, that the city was going to carry this through as an experiment to see whether diverse

income groups could live together, and they were committed to that.

Thirdly, I was also offered the opportunity for tax abatement, which was another thing. Another was I was offered the opportunity for relocation, all the last of which was a big problem at the time, especially after my experience on the east side.

So my expectation was a community of racial and economic mixes within a reasonable proportion. That reasonable proportion was at the time 25 percent low income.

THE COURT: How did you seek out in order to get assurances on a subject matter which you say was of utmost importance to you?

THE WITNESS: The person that I spoke to -- the two people I spoke to were Sam Ratensky, who was, I think, the assistant at the HDA at that time, and Mr. Lauria, who worked under him.

BY MR. MORRIS:

Q During the period up to 1970, did you --

A I am sorry. Can I just finish that question?

THE COURT: Yes, sir.

A After having moved into the area, I stayed very active in terms of the implementation of the plan

and subsequently met with Ted Weiss, who was our political representative from the area, because the City was about to turn another building, which was not on the original plan, into a low income housing project, and we went -- met with both our representative and the City to indicate our displeasure not in the percentage of low income but the distribution of low income.

There were no low income families above 94th Street but they were now aggregating the majority of the low income family between 94th and 90th.

By the way, in terms of your low income here you are missing all the brownstones that were renovated in the area for low income families.

So we met with the City. I think at the time we were able to convince them that it was not a good idea, that they should look for a better way of dispersing them so as not to ghettoize the low income.

THE COURT: I am sorry to interrupt you but when you say something of that kind the other side has a perfect right to know what you are talking about, who was present, when the meeting was held, what was said by who and so forth. You can't just sweepingly throw that in. How do they know what meeting you are talking about? So give us what particulars you are

talking about. What date are you talking about, who was present and where was the meeting held.

THE WITNESS: The first meeting was with Ted Weiss.

THE COURT: Where?

THE WITNESS: It was in a restaurant -- this is going back some years -- it was in a restaurant downtown. Bob Kagan was with me.

THE COURT: Who is Bob Kagan?

THE WITNESS: He was a resident in the area who has subsequently moved out.

THE COURT: Who else was present? When you say Ted Weiss, do you mean the councilman?

THE WITNESS: Correct. There was one other person from the community and I don't remember who that was.

THE COURT: All right.

THE WITNESS: We also met with Mr. Fried from the HDA -- no. I don't remember who I met with at the HDA so I won't persue that.

THE COURT: What was taken up when Mr. Weiss was there? What was that?

THE WITNESS: The fact they were aggregating all the low income in one area. We felt in order to

carry out the purpose of the plan they should be dispersed.

THE COURT: So that was in general the subject that was discussed?

THE WITNESS: Correct.

THE COURT: Later on there was a conference with a Mr. Fried, you say?

THE WITNESS: I believe so. I believe it was Mr. Fried. That is where my memory fails me. I don't remember who at the HDA we met with.

THE COURT: But it was somebody from --

THE WITNESS: HDA.

THE COURT: Do you remember who else was present besides that person and you?

THE WITNESS: Mr. Kagan, myself and two or three people from the HDA, and they heard our case.

THE COURT: Do you remember their names?

THE WITNESS: No. I think Mr. McClellan was there. Hugh McClellan might have been there.

THE COURT: What is your best memory as to the date? What year was it?

THE WITNESS: I think it was '66, because it was after the housing project -- the two housing projects were built, Stephen Wise and the one on 90th

or 92nd and Columbus.

THE COURT: Fix it in relation to the time of the renovation of your own building.

THE WITNESS: It was in '66.

THE COURT: Where was that meeting?

THE WITNESS: At the HDA.

THE COURT: And where was that, in what office?

THE WITNESS: At the time their offices were --

MR. MORRIS: Two Lafayette Street?

THE WITNESS: Yes.

THE COURT: Two Lafayette Street?

THE WITNESS: Yes. Before they moved to Gold Street.

THE COURT: What was said and by whom? Who said what on that occasion?

THE WITNESS: All that was said was that we as a community, representing the community, and at the time also had communication with Father Browne --

THE COURT: You are wandering. What was said at that meeting?

THE WITNESS: We just presented the case.

THE COURT: What did you say?

THE WITNESS: We said we do not believe it

is in the best interest of the plan to aggregate, to congregate, to consolidate all the low income in one area.

THE COURT: And what was the position of those from the official unit?

THE WITNESS: The City responded that they understood what we were saying and that they would take it under advisement.

MR. GOLD: Your Honor, may I respectfully move to strike this testimony? First of all, there is absolutely no foundation as to what sites Mr. Friedberg is talking about. He also spoke about --

THE WITNESS: Yes.

THE COURT: This is the lawyer talking to me. You must remain quiet.

MR. GOLD: Changing another site to low income.

THE COURT: There is something in what you say. You will see from the recitation I make upon the record that these matters will have to be held until they are filled in or abandoned. If I had nothing else I would grant your motion, but I have a prospect it may be filled in. So renew your motion at a later time.

BY MR. MORRIS:

Q Can you tell us which public housing projects were the subject of that discussion?

A I believe it was the site north -- on the northwest corner of 89th -- between 89th and 90th.

Q Was that public housing?

A It was proposed for public housing at that time.

MR. GOLD: Northwest corner of what?

THE WITNESS: Northeast corner of Columbus between 89th and 90th.

Q And that was the subject of the discussion you had with Councilman Weiss, is that correct?

A Correct.

Q Did you, during this period up to 1970, in the course of your contact with the West Side Urban Renewal area, make observations as to what was happening in the area with respect to the performance of the West Side Urban Renewal plan?

A Yes, sir.

Q And would you tell us what those observations were?

A The plan started off and moved very rapidly. It was extremely encouraging. There was a great deal of excitement on our part. We went ahead with the

renovations. There were lots of other people, friends of ours, that we proselytized. I brought my brother -in-law in and other people in because it was a nice opportunity to creat something in New York City which we could all participate in.

I knew a number of people in the first area and having worked also on the buildings there was a fair amount of interest in the quality of design and also the implementation, rapid implementation, of the projects. This encouragement, as I said, led us to believe we had made the right decision.

The City was in the process of relocating tenants who were in the buildings they owned on the avenues, the processed land they had taken ownership of, including the parcel across the way from my building, which os 116 West 88th Street.

With the relocation, with every family that was relocated, the unit was then boarded up and that was a sign, even though we were in the last stage, that was a very definite sign of progress and commitment -- progress in the area and commitment on the part of the City. It was extremely encouraging, and up until the time that these buildings were opened up again --

Q Just a moment. Before you come to that, did

you observe new buildings being built in the area in accordance with the provisions of the Urban Renewal plan?

A Yes, sir.

Q And did those progress, beginning up at 97th Street down into the area?

A Yes, sir.

Q And would you say that they were progressing at a reasonable pace in accordance with the projections of the Urban Renewal plan?

A Both at a reasonable pace and at a reasonable design level, which was extremely important.

Q Yes. And were your observations of the area such that you believed during this period up to 1970 that the concept of the Urban Renewal plan would be accomplished?

A Yes, sir.

Q Did there come a time in 1970 when that situation changed?

A Yes, sir.

Q Would you tell us what occurred?

THE COURT: This gives you the opportunity to expand in detail so I can see what you mean. Don't give me conclusions. Give me observations with your

eyes and your ears.

A The first observation was that the whole project appeared to be slowing down, that the activity, the rapid activity, in the beginning was not being kept up as the project developed southwardly.

THE COURT: You mean construction-wise?

THE WITNESS: Construction-wise on the avenues. Being also directly involved with certain projects I could see this not only visually but actually I could be involved with it academically or intellectually by having the plans in my own office and seeing the amount of time it took to process plans and -- well, process plans and actually go into implementation.

The other thing that I saw was the opening up of the building for new tenancy. That is called squatters. That occurred across the street from me.

If I may, the problem there was not that there weren't people in the buildings when we moved in and that they weren't low income or that the squatters were any different in terms of their basic character to me as much as the kind of care that the buildings received, the nature of the activity and the commitment on the part of the city was not as strong. The kind of care was sloppy, the kind of commitment was not as

strong. I began to feel as if the project was being abandoned or else put on a side or back burner, which from a professional standpoint is exactly what began to happen.

THE COURT: The trouble with what you are doing, and you don't realize it, I am sure, is that you are giving us your conclusions instead of giving us the facts which warrant or lead up to your conclusions.

If a witness is merely to give us conclusions, how are they going to meet the issue? Who are you to just pronounce what a conclusion is without assigning the bases to these conclusions? So please give us the details upon which you predicate your conclusions.

THE WITNESS: The buildings were occupied at the time -- the City-owned buildings were occupied at the time that I moved on the block. They were occupied by low income families. There were more low income families on the block at the time I moved in than there are at present because many of the brownstones -- we were one of the first on the block and many of the brownstones were not renovated. Therefore they had single room occupancies. But the stability of the area kept the place -- well, it kept the general demeanor of the whole place or stablizied the demeanor of the place and

there were few conflicts between economic or ethnic groups. As a matter of fact, there were various incident where there was reciprocation in terms of help. We were all living there and there was no animosity.

Q This is for the period prior to 1970?

A Yes, prior to the squatters.

Q Would you tell us what happened in 1970?

A The squatters moved in. There was a great deal of fear on the part of the homeowners that the City was abandoning its original commitment. Now, that fear was translated into various kinds of political action both on the part of the homeowners who said "We want some commitment from the City" and also in demonstrations at Strycker's Bay on the part of the squatters or those interested in maintaining the squatters.

Q Did what you have described have an impact or affect on what was occurring to the area genera-ly?

A Absolutely . It polarized the situation.

Q Just a moment. Yes.

Now, would you please tell us what that effect was and what you base that on?

A The effect was to set up -- if I may, there always was an there probably will continue to be, based on my experience, a problem with having two different

economic and two different ethnic groups side by side. But in this case when it was made political --

Q You are not answering my question. You are going off on a tangent.

THE COURT: Mr. Gold, what were you going to say?

MR. GOLD: I ask to strike the conclusion again that there always will be a problem when two groups or different groups live side by side.

THE COURT: No, I disagree with you. Your motion to strike is denied.

end T3 Next question.

Q Would you proceed to answer the question. Tell us what happened with the area after 1970 and what you base that on.

A When the homeowners, of which I was a part, went to the City and complained that they did not feel their rights were being protected, they did not argue, we did not argue, the problem of low income. We did not argue the issue of low income. We argued the fact that the City was going to, by the nature of this action, slow down, appear to slow down, this is our perception of it, the activity, the building activity, in the area.

When that happened, we were interpreted as being hostile to low income.

THE COURT: What do you base that on, the interpretation of being hostile?

THE WITNESS: Because of the verbal accusations at the Strycker's Bay meeting that the homeowners were against low income.

THE COURT: You heard that?

THE WITNESS: I was at one of the meetings at a school at 85th Street, the Brandeis School, where I heard that.

MR. DOUW: May I further state, at this meeting as to which he personally attended, if we could

have a date -- and I will understand there were meetings he was part of with City officials, there again --

THE COURT: I must insist, and the lawyer is well within his rights when he rises to object, because of your sweeping comments without particularization --

THE WITNESS: I won't deal with it.

THE COURT: You must give it to us.

You should also give us the date as best as you can remember. For instance, where you heard what you just testified to, when was that about? If you don't remember the month or day, what year?

THE WITNESS: 1971.

THE COURT: Was it the beginning or end or middle of that year?

THE WITNESS: I believe it was in the fall, but I cannot be sure.

THE COURT: Where was it?

THE WITNESS: Brandeis High School.

THE COURT: Tell us what took place in your own way, as you best remember.

THE WITNESS: I came in -- well --

THE COURT: When you arrived --

THE WITNESS: It was at the end of the meeting. There was a great deal of dissension between the people

in the audience and what I heard, verbal comments from the audience, regar ding the homeowners. I don't know the specific words but the general gist of it, if I may, it was that we were prejudiced and bigoted and that the issue was one of bigotry rather than our interest in our own personal investments.

THE COURT: What else was there said on that occasion, the substance of what was said?

THE WITNESS: That was basically it.

THE COURT: Next question.

Q Wouldyou tell me --

THE COURT: Mr. Douw, what else was there that I may have skipped?

MR. DOUW: I thought he mentioned meetings with City officials and suggested he was part of it.

THE COURT: We have already passed that. You will have to come back to that on your cross.

Q Would you tell us, beginning in 1970, what impact or effect these various things that you have told us about had upon the area with respect to the performance of the West Side Urban Renewal plan? What was happening in the area?

A The only thing I can say would be from a professional standpoint. Plans that we were asked to

work on as consultants took a much longer period from the time, the inception, of the design, to the time we were asked to complete the working drawings and to the time they went into construction.

Q What was the effect of that upon the area?

A It had a demoralizing effect on the area.

Q Did it have any effect with respect to the situation that you testified before that prior to 1970 the Urban Renewal plan was being carried through and the area was improving? Did it have any effect in that respect?

A Yes. Many people, myself included, began to question whether we had made the right decision and began to look for alternatives, possible alternatives.

The first alternative was to go and press for our rights in a situation and therefore an organization called CONTINUE was established, and then other alternatives were to look for other places to live within the city.

Q Would you say that the area subsequent to 1970 has been deteriorating?

MR. DOUW: It is leading.

THE COURT: It is, but I will take it.

What do you say to that?

A The general environment of the area has deteriorated.

THE COURT: On what do you base it?

THE WITNESS: The amount of garbage on the street.

THE COURT: Those are details. That is what I want you to tell us as long as it is the truth.

What do you wish to say with regard to those details? You go ahead. You have the floor. Go forward with your testimony.

THE WITNESS: The City has closed up the buildings on Columbus, most of the building, and it is literally frightening to walk on Columbus Avenue.

THE COURT: That is a conclusion. Why?

THE WITNESS: It is frightening to me because there is no light on the street and no activity.

THE COURT: Say so. "There is no light, gangs hanging around, there is garbage, there is this and that."

You don't do that. You give us conclusions. "I was frightened."

You have to tell me why you were frightened. Don't you see. We are wasting time.

THE WITNESS: When you board up the front of a building you get no light from the building. The only lights we have are the street lights and Columbus Avenue becomes a dark street, and in our area darkness has -- that is a conclusion -- darkness generally --

THE COURT: I can conclude from that. I don't need you on that.

THE WITNESS: The other thing, the garbage is all over the place.

THE COURT: That doesn't mean anything.

THE WITNESS: In the street itself. It's in front of my house. It is in front of the City-owned building. They have deteriorated in their upkeep, the City-owned building.

THE COURT: That is a conclusion.

THE WITNESS: I will tell you why.

THE COURT: Go ahead.

A The buildings across the way, the railing was missing from the building for a period of time, almost six months. The railing in front of that building, the drop-off, was 10 feet down. There was no railing. This is a violation of the law.

THE COURT: How long has that existed?

THE WITNESS: That has been corrected, but it existed for six months. The sidewalk is still broken and has holes in it.

THE COURT: Hold it. You are a fast speaker and you are an intelligent man. But you are not helping me resolve a very serious situation that is in my lap.

You live there. You see things. The Judge is almost imploring you to tell me what you see with your eyes, what you hear with your ears,

THE WITNESS: Sir, I am sorry. I will attempt to do that.

THE COURT: Stick to garbage first. I want to get through with that. You speak about garbage, give me details on that. I don't care how far you have to go. Tell me what the fact is. What is the fact with regar d to garbage?

THE WITNESS: The garbage in front of the City-owned buildings piles up daily and it is not kept, neatly kept either in cans or in bags.

THE COURT: It is open?

THE WITNESS: It is either open or ripped open. There are many children in the building and therefore the children play in the garbage and around the garbage.

THE COURT: I can picture that. Go to something else.

Where else was the garbage?

THE WITNESS: There is a lot on 87th -- between 87th and 88th Streets, between Columbus and Amsterdam, diagonally behind my house. The City owned the buildings, they tore down the buildings, asphalted it,

and the SeeBees built a playground. That lasted for a while. It was quite nice. It was allowed to deteriorate. It became a garbage pit. It became a place for various forms of waste, a dog walk area. Specific instances, kids get in there. There was no fence for a long time. I have written the City personally two letters, one registered, asking for some relief. The first letter I wrote --

THE COURT: What was the situation? What did you see? "I saw" -- what?

THE WITNESS: I saw children breaking glass in there. I saw a totally unsupervised situation. I saw children taking the rocks from the construction in the site and throwing it into the yards adjacent -- into my yard.

THE COURT: Those are facts.

THE WITNESS: I have a window that was broken in my house. I wrote to the City complaining that the window was broken and received an apologetic letter but no action was taken.

THE COURT: What else about garbage? Stick to that. What else do you want to tell me with regard to garbage in addition to what you have already testified to?

THE WITNESS: I believe that is it on garbage.

THE COURT: Go to another phase. What is the next phase you want to take up? Wht other defect has

brought about a demoralization, has brought about a situation that you find to be intolerable? What subject?

THE WITNESS: For whatever reason, and I don't know the reason, but prior to the time that the squatters moved in the demeanor of the people in the building adjacent, across the street from me, was acceptable in terms of noise.

THE COURT: Let's go to noise. What has been happening?

THE WITNESS: My bedroom faces the street and I am right across from this building.

THE COURT: From what building?

THE WITNESS: 101 to 109. The nature, again, and I understand this, the nature of the people who live there is to relate to the street. I understand that. We accept noise up until 11:00 o'clock, which is against the law.

As an aside, I have a music place where music students reside next door; these are middle income people and they play the piano up to 11:00 and then it is my right to ask them to stop.

The buildings across thestreet, the people stay up to quite late in the morning. This is acceptable. The only problem is that they make noise --

THE COURT: Until what time?

THE WITNESS: Three or four in the morning.

THE COURT: What do you mean by noise?

THE WITNESS: We have called the police --

THE COURT: No, no. You say noise --

THE WITNESS: Bugle playing, firecrackers, yelling and screaming and singing. These are mostly by the older -- the teen-agers. Those are the majority of the problems. Radio, putting a radio in the window and having it blare out.

THE COURT: With what frequency does this occur?

THE WITNESS: During the summer months it occurs almost every night. They congregate outside almost every night.

THE COURT: Stick to noise.

THE WITNESS: The congreating is where the noise exists. There is social interaction and that manifests itself into a fair amount of street noise.

THE COURT: When did this noise become too accentuated?

THE WITNESS: This is a seasonal problem and it occurs during the latter part of spring, throughout the summer, and the early fall. As it gets cold the noise subsides.

THE COURT: Go to the congregations.

THE WITNESS: The noise and the congregation occurs simultaneously.

THE COURT: I don't quite understand the congregation. Where?

THE WITNESS: On the stoop in front of the building.

Life style and the population density of the room brings people out on the street. They are a group of garish people. They move to the street. When they are out on the street there is a fair amount of physical interaction, fooling around and games and so forth, and around Mother's Day, which is I guess traditional, the firecrackers are all over the place, both on 88th Street and 87th Street.

THE COURT: I am not concerned with one day.

THE WITNESS: It starts Mother's Day and then goes on for a month or two months.

THE COURT: Celebration of Mother's Day?

THE WITNESS: I don't know what. It really goes on.

My wife wrote a whole list of things where she has been plagued, and she lives there during the day. I come home at night --

THE COURT: All I want is what you know. If

your wife is to be a witness that is something else.

THE WITNESS: My children are affected by this because they cannot sleep. The firecrackers go on 12:00, 1:00 o'clock at night. It is a game.

THE COURT: Is the congregation of these people just confined to your particular house, from your observation, or is it elsewhere?

THE WITNESS: It is primarily in front of the city-owned buildings where the stoops provide sitting and active space. That is primarily on the north side of the street because the south side building does not have a stoop. Sometimes they sit on the stoops of brownstones like mine or the one next to me and so forth.

THE COURT: What other subject matter, item, do you attribute to the so-called breakdown?

THE WITNESS: I believe that is the real -- this is a value again, but I believe the real problem has been the conflict, the political conflict, between the two groups. It has really caused the hostility. The other things are just annoyances and the problems there, you call the police and you don't get the kind of action you want, but the real problem comes in the hostility that has been created by the -- created between the groups in their perception of what each wants.

THE COURT: How does it manifest itself?

THE WITNESS: My children cannot play -- there is a playground next to the house. My children are pushed around, called names.

My wife is very dark and therefore considered Puerto Rican and therefore doesn't have as much trouble but other children on the block I have spoken to have been molested or pushed around.

There are a number of instances that I didn't personally experience, but where it makes it uncomfortable for the women mostly and the kids to move up and down past certain buildings. This, again, only certain people, not everyone. This is not a categorical statement. That is why I don't want to make it sound like a racist kind of thing. It has to do with some idea of territory or something of that nature, and we are fighting to live together in a situation. The problem is that the level of hostility that exists creates a very uncomfortable situation.

This does not allow us to communicate our problems together.

THE COURT: Mr. Friedberg, I am afraid that is one of the most troublesome factors with respect to the maintenance of peace all over the world, failure to get together and to understand one another, but you have ex-

pressed yourself on that score.

What I am concerned with is the way it manifests itself. As a fact finder I must have that. You can say "pushing the kids around, " you may attribute that to what you think is the political factor. That is for me to resolve.

I may agree or disagree, but I do want you to complete your testimony on facts.

What other disagreeable factors or factors that you oppose or that you regard are not consistent with the representations made at the time you undertook this venture to live at 116 West 88th Street, what other factors do you wish to call the Court's attention to?

THE WITNESS: My primary concern --

THE COURT: Are there any other factors that you wish to call my attention to?

THE WITNESS: I think I have done that.

THE COURT: Very well.

BY MR. MORRIS:

Q Mr.Friedberg, have you given consideration to the sale of your house in the area?

A My wife has been -- yes, sir.

Q Tell us what has happened with respect to that.

A We are waiting, literally waiting, for the

outcome of this case and also to see in terms of which way the neighborhood is going to go. I do not wish to live in a predominantly low income area.

Q If the neighborhood continues as you have observed it is going at the present time and no improvement occurs, what will you do?

A I believe I will look for another place to live.

Q You will move out of the area?

A Correct.

MR. MORRIS: That is all.

THE COURT: It is now 12:12. I will carry on until 12:30 when I have to see other lawyers in another matter.

You go ahead and start your cross-examination. Go as far as you can. If we can be through with it, fine, if not, he will have to come back.

CROSS-EXAMINATION

BY MR. LAND:

Q You live two doors down from Mrs. Sours, don't you?

A Yes.

Q Across the street from you then are approximately five brownstone buildings occupied by squatters, correct?

A Yes. I assume they are squatters. Are you

telling me they are squatters?

Q I am asking you.

A I assume so.

Q You testified about squatters moving in. Is that the buildings you refer to?

A They were called squatters because the buildings were occupied.

Q Those are the buildings referred to, right across from you?

A Right.

Q Are they brownstones, four or five-story brownstones?

A They are American front buildings, new law tenements.

Q How tall?

A Five stories.

Q How wide?

A Approximately 30 feet.

Q How deep?

A I don't know. I would assume they are 60 to 70 feet deep.

Q About the size of what we call brownstones?

A They are not. They are multiple dwellings and not the size of a brownstone.

THE COURT: Can you give me a rough idea of how many families --

THE WITNESS: These are tenement-type buildings and they take twice -- the brownstone was a single family residence originally and normally took one family per floor. These take two or three families a floor.

THE COURT: Are they the same as Mrs. Sours testified to, a group of five?

THE WITNESS: Yes.

Q Is your street tree-lined?

A Yes.

Q You have garbage all over the street up and down next to the trees?

A Yes.

Q Right now there is garbage today?

A There was garbage yesterday.

Q All over the place?

A Not all over the place. I don't want to create an exaggerated situation. We have a fair amount of garbage. We have more than other streets.

Q Where is that located?

A It starts in the mounds of garbage that are in front of the city-owned buildings and is strewn by the kids and the wind. It does not occur every day and

not all the time, but it is around enough to be annoying and also what I consider is a visual blight.

Q This garbage is from the squatter buildings?

A Here again I am talking of the city-owned buildings and I assume there are squatters in those buildings. I don't know the relationship between the people living there and the city.

Q The garbage around the city-owned buildings, you are speaking --

A 101 to 109.

Q And the five buildings we are talking about across the street from you?

A Correct.

Q How is the garbage situation up on the end of your block, on Amsterdam Avenue?

A Where the city housing project is?

Q Yes.

A It is fine. It is maintained bythe city housing and they keep it in order and they keep the garbage in a container downstairs instead of out in the street.

Q To your knowledge, that is a low income housing project?

A Yes.

Q As to that project, do you have any complaints

at all?

A In any way?

Q Yes.

A No, other than the fact --

Q Yes or no.

A Yes.

Q What are they?

A There is a playground which the children of the block have access to but generally can't really use because of the relationship that exists between the people who live there.

Q Anything else?

A No.

Q You testified that in respect of a meeting you had with certain city officials that you were concerned about a particular site location which you identified as being located on the east side of Columbus Avenue between 89th and 90th Streets, is that correct?

A I believe so, yes.

Q Do you know that particular area referred to as Site 36? Does that ring a bell?

A I think that is correct.

Q Currently standing on that particular location is there a building known as the Turin House, a cooperative

building? Is that what you are referring to?

A I don't know the name of the building.

Q What is there right now?

A I am trying to remember.

Q Is it a low income house?

A Sure. I know that building. Right. It is a middle income building.

Q What was your concern about this Site 36, this project?

A Our concern was that you had Stephen Wise on 90th Street. You also had the proposed brownstone conversions also on 90th Street. You had the building on 88th Street and 89th Street low income, and you were proposing another building, also the one on 92nd Street, another one was going to be proposed on 89th Street.

You then had also the low income on 93rd and 94th. We were suggesting that you had no low income above 94th Street between that and 97th Street. Subsequent to our meeting there was building that was outside of the area: The Housing Authority engaged in the development of a low income project on the West Side of Amsterdam Avenue outside of the area, 93rd and 94th, I believe, or wherever it was located.

That was as a result of our meetings.

Q What was in the Site 36 that was bothering you?

A If you took all the low income families --

Q You are concerned with whether they were building a cooperative on Site 36?

A It was supposed to be a cooperative. They were considering it as a low income housing project. Our concern was not to reduce the amount -- you asked me about my concern?

Q Your concern was that they were considering making it a low income housing project?

A Yes.

Q Do you know whether that particular site was originally designated as a low income housing project?

A It was not.

Q You are absolutely positive of that?

A I am absolutely positive. I believe it was not.

Q You testified you had a bad experience on the east side. What was that bad experience?

A You misunderstood me.

We found that if the city did not relocate, there were not provisions for relocation, it was difficult to relocate people in a rent-controlled building. That occurred when we looked for a building on the east side.

Q You testified that there were no lights on Columbus Avenue. Is that your testimony?

A No. It is not correct.

Q Tell me about the lights on Columbus Avenue.

A There are lights. The stores are -- a good number of the stores are boarded up.

Q On Columbus Avenue?

A Yes.

Q The area we are referring to is the West Side Urban Renewal area between 89th and 99th. You are telling me a substantial number of the stores on Columbus Avenue, on that stretch, are closed up, boarded up?

A That's right.

Q Today?

A Today.

Q "A substantial number," means what percentage of the total stores?

MR. MORRIS: Your Honor, I think there is a confusion as to the area that is being discussed. Mr. Land said from 89th to 99th. I know he didn't mean that. I would like to know what area he is talking about.

MR. LAND: 87th to 97th.

MR. MORRIS: That is better.

A I am talking about the remaining city-owned

buildings, the areas that have not been renovated or rebuilt.

Q Wait a minute.

A I am not talking about all of the Columbus Avenue, I am talking about that area that has not yet been reconstructed, the part that affects me.

Q How many blocks of Columbus Avenue between 87th and 97th Streets have not been reconstructed?

A I believe it is five.

Q Five blocks?

A Yes.

Q Half of the blocks, from your testimony, have not been reconstructed?

A Those are the street frontages. I was counting the block on the east side of Columbus and on the west side. That is two blocks. It would be between 87th and 90th, exclusive of Turin House, that has not been reconstructed.

Q You are limiting your testimony then as to the absence of lights and the boarding up of frontages solely between 87th and 90th Streets on Columbus Avenue?

A That's right.

Q How about the rest of Columbus Avenue? To your knowledge has that been redeveloped?

A Yes.

Q Are there lights?

A For the most part.

Q Are there stores that are open at night?

A That's right.

Q Between 87th and 90th Street is it not true that some of the frontages on Columbus Avenue are vacant lots?

A One. They have been demolished by the city, buildings that have been demolished and demolished for a period of years.

Q Are you not aware that that particular part of the urban renewal area was the last part to be redeveloped? Are you aware of that?

A I was fully aware of that.

Q Do you know that as to the block between 87th and 88th Street on the west side of Columbus Avenue the State of New York is now undertaking to build a housing project?

A I am aware of it.

Q On Site 44?

A That is a recent development.

Q Do you know that on Columbus Avenue on the east side between 88th and 89th Streets the State of New York is also --

A I am aware of that too. I am working on that project.

Q You know these two projects are in planning and ready to go ahead?

A They are not ready to go ahead, but in planning.

Q This is the kind of development you are in favor of?

A I favor the entire -- yes.

Q What kind of buildings --

THE COURT: That is the whole issue before the Court. The plans have the applause of all civilized men.

The issue is where the performance has taken place there is an entirely different issue.

Q You say you are working with the State on these two projects.

A I am working with the architect on one of the projects.

Q What kind of buildings are these going to be, to your knowledge? Low income housing projects?

A I don't at the present time know.

What I was informed up at the time I worked on the project, on the north side of 88th, there was going to be a fair amount of 236 money. I odn't know what the present status of the project is.

Q You mean persons of low income will reside in this building when completed?

A It was a combination of low and middle income. It was a formula.

Q You favor that?

A I favor the construction of the entire area in accordance with the plans. I favor the construction of the entire area in accordance to the social mix and economic mix.

I have no objection to the Urban Renewal area. The only reason I am here is because I believe that the mix is critical to the success of this area and if the mix is not kept then the area, my own personal feelings, has a possibility of not working.

THE COURT: That is a succinct summarization of what you have been endeavoring to say and to establish by facts. I am not necessarily adopting it, but that was a good statement as to this witness' position.

Gentlemen, it is quite evident that we cannot finish.

Mr. Friedberg, Mr. Morris was very anxious, even with the likelihood of upsetting the Judge, of putting you on the stand even though he knew it interfered with what I directed be done. He was hopeful you would be

through in an hour. That has not come to pass.

The attorneys have a perfect right to cross-examine you.

You are a witness. You have no choice in the matter.

All I am trying to do is to make it clear to you that this is not done to persecute you or to bother you or to inconvenience you.

I have people waiting outside in that courtroom on a serious matter. They want to see me too. They have a right to have a cut at justice.

There are a lot of things going on besides your testimony.

All of this leads to the very simple question:

Gentlemen, can you give me a rough estimate of how long it will take to finish the cross-examination?

MR. LAND: 15 minutes, your Honor.

MR. GOLD: I will be 10 or 15.

MR. DOUW: 10 minutes.

THE COURT: There it is. I am perfectly willing, and I know counsel will be perfectly willing, to have you come back at three o'clock today because I have other things with the attorneys. You will not be kept waiting. You will be put on the stand. You will finish

your cross --

THE WITNESS: I have a meeting regarding the Smithsonian Institute that I cannot miss. It is a larger group of people and myself. I am required to attend. I cannot make it this afternoon. I could do it probably tomorrow morning.

THE COURT: This afternoon is out?

I can direct you to be here and send your regrets to the Smithsonian. We have some power here.

THE WITNESS: I know that.

THE COURT: What you are asking me is to please recognize it. I am going to recognize it. Come back tomorrow. When you put it on that basis --but when you add "you can't touch me, I have to go to the Smithsonian," I want you to know --

THE WITNESS: It was not my intent.

THE COURT: Come back tomorrow morning at an hour agreeable with counsel.

I will see the attorneys promptly at 2:15. We will go into the matter of the time required for the balance of the trial. We will take that up first in the robing room where we can have a frank and open discussion, which you may find preferable. But be ready at 2:15 for that.

That should not take more than three-quarters of an hour.

I want to resume. After we are through I want to go on with proof until the close of the court day.

May I remind you again, gentlemen, in case I forget to say it, that on Friday we meet at 9:00 o'clock in the morning and carry on until 1:00.

(Luncheon recess.)

2:15 P.M.

(Discussion off the record in the robing room.)

(In the robing room.)

THE COURT: Let the record show that there has been an off-the-record discussion lasting at least an hour and a half in the robing room. My offhand reaction is that it was very much worthwhile.

It was precipitated by an event that took place in this very robing room last Monday, May 6, when in an off the record discussion -- and I must say it came as a bombshell because I had absolutely no notice whatever, directly or indirectly, or even by the remotest intimation -- counsel, in answer to the Court's inquiry with regard to how much time the balance of the trial would take, revealed the following:

Mr. Morris said seven days.

Mr. Land, three to four days.

Mr. Gold said four to five days.

Mr. Douw said seven days.

I must repeat that announcement flabbergasted me and caused a great deal of perturbation. After all, a Judge's primary obligation is to the litigants. We had

spent a good deal of time on this case since its very inception and I could not, out of hand, just say "This runs counter to everything that was said as to the amount of time needed to complete the case and therefore I am going to declare a mistrial."

That is so easy, and to thrust it possibly on another colleague, how can one really do it and sleep?

So I was greatly disturbed. It might not be a mistake to have the record reflect just what was the state of affairs in this case at the time we resumed the trial on April 22nd. I shall endeavor, sooner or later, to spread upon this record what is reflected in my notes and what is already in the transcript, all supporting the proposition that counsel were all in agreement that the balance of the trial, meaning the trial after the negotiations which proved unsuccessful, the time required to complete the case after the negotiations failed, would be 15 days.

That was our understanding even while the negotiations were going on. In fact before the negotiations were undertaken this was our understanding.

So it was not at all surprising that counsel, Mr. Land in particular, said on the record, as the record will reveal, the following -- this took place on October

11, 1973, on Page 665 of the trial transcript.

"The Court: Now I am going to make a recital of what Mr. Land has said and if I am incorrect we will then correct the record.

"Mr. Land tells me that counsel agree, seem to agree (and Mr. Morris chirped in and said yes) that it will require 15 more trial days."

"Mr. Land: And I mean trial days of seven hours a day."

Later on the record will show at that page that I said:

"The Court: Is there anything that I have said that is incorrect?

"Mr. Land: No, your Honor."

Having figured that there would be 15 more days for this trial I committed myself long before we resumed on April 22 as follows:

The week of April 22, the week of April 29, the week of May 6, and the week of May 13, Trinity. There you will see that there were more days than the 15, but I bore in mind that I would be absent two days, for a reason I shall explain later, and that there might be a need for a little extra time for one reason or other. I allowed that time.

May 20, I set down a two-week trial for Cinamon against Edwards & Hanly, that was to be for the week of May 20 and the week of May 27.

For June 3, a criminal case, U.S. against Copen. There are four defendants in that criminal case.

June 10, U. S. against Ruiz, two defendants.

June 17, U. S. against Spears.

June 24, U. S. against Campbell.

This will accentuate the sorry state I was in with the announcement of last Monday. The record will show that I did not pick the subject up because there were witnesses who were called on Monday and on Tuesday and so far today. I insisted that we have this conference in the robing room today in order to straighten the matter out.

I should say that on Monday last I told counsel that they should give the matter a great deal more thought and try to see if it could not be whittled down to size.

Before I proceed, I should make a brief recapitulation of what my notes show has been done by way of my own participation in this case.

September 19, 1973, 10:00 A.M. to 4:15. Testimony taken re application for preliminary injunction.

September 20, 1973, 9:00 A.M. application for

temporary injunction withdrawn. We are now at trial; adjourned at 10:00 A.M. to September 20 at 9:00 A.M.

September 21, 1973, 9:00 A.M., testimony to noon. Witness Starr had important engagement. "Hereafter no adjournments short of serious illness," said the Court. Trial to continue October 9 and 10, full days.

October 11 to 1:00 P.M., starting hour 10:00 A.M.

11/20, 11/21, unless canceled five days before.

My next entry shows that on October 9, 1973, we took testimony 10:00 A.M. to 5:00 P.M.

On October 10, 1973, testimony from 10:30 to 5:00 P.M.

On October 11, 1973, 10:00 A.M. to 1:00 P.M. Adjourned to November 20, 10:00 A.M., unless canceled by Judge five days before. Counsel were informed that the Court had, by assignment from the Chief Justice of the United States, to sit in Phoenix and therefore the Court would be absent and would have to take the flight to Phoenix on October 11, and hold court in Arizona for approximately a month.

Counsel were agreed on entering upon negotiations looking for an acceptable formula to be submitted to the Court for approval.

Continuing with October 11, 1973, I have already placed upon the record what was said on that day.

Now we come to November 20, 1973, conference 10:00 A.M. to 1:30 P.M.

December 28, 1973, we received a letter from Mr. Morris, dated December 26, 1973, asking for additional time for settlement negotiations and postponing the trial from January 7, 1974, to some time in February. We approved.

January 30, 1974, 11:00 A.M., chambers, all agreed to an adjournment because City and State personnel are working for a solution. Lawyers to meet on February 14; conference before the Judge February 27 at noon.

February 27, 1974, noon to 1:15 P.M., conference held in chambers, adjourned to 4/9, 5:00 P.M. If no progress, be ready to proceed with hearing about April 20.

April 9, 1974, 2:00 P.M. to 3:15, conference held. Court was informed that negotiations had broken down.

April 10, 1974, 4:45 P.M., to some time after 6:00 P.M., there was a conference in chambers.

April 11, a letter was sent to all counsel setting down the continuation of trial for April 22 at 10:00 A.M.

Here is the calendar since that day:

April 22, 1974, 10:00 A.M. to 5:00 P.M.

April 23, 10:00 A.M. to 4:30.

April 24, 10:00 A.M.to 12:30. Mr. Morris had a court commitment in the afternoon.

April 25, 10:00 A.M. to 5:00 P.M.

April 26, 10:00 A.M. to 1:00 P. M. Mr. Land had an afternoon court commitment.

April 29, 1:00 P.M. to 5:55 P.M.

April 30, 10:00 A.M. to 4:30.

May 1, 10:00 A.M. to 3:15 P.M.

May 2 and May 3, I had a meeting of the Council of Judges dealing with sentencing in criminal cases at Beverly Hills, California, and I spent May 2 and May 3 there, flying back to the city on Saturday, May 4.

May 6, we started in at noon to 3:30, then I went to the Bar Association to attend the memorial services for Judge Botein and returned at 6:00 o'clock and sat until 7:35.

May 7, 10:00 A.M. to 4:30 P.M.

Today we started at 10:00.

Now I resume.

In the course of today's conversation it is quite clear that counsel had spent considerable thinking on how to keep the case within bounds. They realize possibly

more now than they did then that this is a Judge who is committed to his obligation and seeks no credit for fulfilling that which is his duty and commanded by his oath; they can see this is a Judge so committed, and it is true of every one of my colleagues in this building, and from my experience with Federal Judges across the land the same thing may be said: Each of us are deeply involved with our mission.

So they now see that even a senior Judge doesn't twiddle his thumbs. He has committed himself to lawyers in other cases who have a perfect right to their day in court.

It would be unthinkable that a Judge should not honor his commitments, especially commitments made in all innocence, that the commitments should be upheld and not interfered with or broken in any way.

As a result of this conference I feel that the attorneys recognize the dilemma that they have created and that they see that the Judge could possibly declare a mistrial and be done with this; they have asked that I accommodate myself somehow to the most positive features of their proof, which of course are imperative and must be adduced, and to which I can offer absolutely no resistance whatever -- that is their sworn obligation and that they

must do.

It means then fashioning our time somehow in order to acquit ourselves with a fair measure of self respect.

So I intend to revamp my calendar so as to accommodate counsel. I am warning them now, we will have to sit at hours that are possiblye somewhat unorthodox, but which have been made so by what has happened.

Let the record show that counsel feel that I know that and I know they have given their best possible estimate, that the following schedule reflects what they think now is the minimum time they will require.

Mr. Morris says that between now and the close of Monday -- and of course I have absorbed a good deal of time this afternoon so we have to bear that in mind, but at any rate some time around the close of next Monday -- which is the 13th, he ought to be through with his case. He assures me he has taken into consideration not only direct testimony but also cross-examination.

When we come to Mr. Land, he has turned over to Mr. Morris certain documents which are very extensive and Mr. Morris can accept them and allow them to go into evidence. That will save a full day as Mr. Land envisioned it. That would nevertheless mean that he would have three days to adduce proof that he regards as essential.

When it comes to Mr. Gold, his best guess is that it would take five days to finish, to put in direct and cross material that he has in mind.

Mr. Douw feels that there is one expert who will take a whole day, as he figures it, and that, in addition, he will require something like two and a half to three more days for witnesses.

MR. DOUW: Your Honor, could I go off the record a minute? It was twenty-three hours. If those are lengthy days, three days may be correct.

THE COURT: I am glad you spoke. I want to stop long enough to say that we are talking about a trial day. Every time we speak of that we mean a minimum of six hours. We mean a trial day of at least six hours, and wherever possible more, and in all likelihood now it will be more.

I am glad you interrupted because I want the record to show it means nothing just to say a day. The point is what do you do during the day. So let's distinctly understand every time I mentioned time, days, I meant at least six hours of testimony.

Does that clear it up?

MR. DOUW: There are four days for twenty-three hours.

THE COURT: Four days over and above the main witness.

Counsel assure me, and if they don't they

must speak up now on the record, that they will confer with one another, as lawyers are bound to do in a case as complicated and involved as this, especially a case where feelings run high, where passions are almost a riot and are constantly in evidence, where witnesses and even spectators show a feeling that almost concerns us to the point of how we can avoid an open clash. It's evident. The very atmosphere is surcharged with hostility.

Therefore, the obligation on counsel becomes vastly more heavy than it would be were these factors are absent. And with that understanding, then, I will not only undertake to go forward and allow them to put in all competent, relevant proof and satisfy their requests for time, but I tell them definitely that I can only do so if by their conference they will whittle down by stipulation, as lawyers are bound to do, those matters that can be agreed upon without taking the time of the factfinder. It's easy enough to just go rattling along and spending enormous amounts of time, but it is another thing to be able to show the Court and satisfy one's own notion of doing right when you can come in and say, "We have agreed upon thus and so" and the taking of proof is obviated.

That I have a right to look to you to do and I have your promise that is exactly what you will do and that in no instance will you do less. If you are not going to do it this is the time to speak up because, plainly speaking, it is because of that that I am extending myself, as I feel obligated to do, but I would not do it, and I want the record to show, if I cannot count on counsel to do their full share.

It goes without saying that this Judge, like all Judges, has many more cases than the one right in front of him. What am I to do with conferences set with lawyers four or five months ago? Brief conferences though they may be, requiring fifteen, twenty minutes, I have to carry on. What am I to do about ex parte rulings in connection with the taking of a deposition in a case I must ultimately try -- tell them to go home, especially when the witness has to return to California? I have to find time to take care of all these demands.

Nevertheless, the minimum of six hours to this case will be what we mean when we say a day.

I take it that the lawyers will see to it that they obviate all inconsequential material, that which is of no real value and doesn't make a contribution to the challenge that the subject matter of this litigation

envisages.

I wrote in my letter, and I am sorry but I should have made reference to it earlier, I did mention it, the letter of April 11, 1974, I want to reiterate what I wrote then. That is the same letter in which I told counsel we were going to resume on April 2[illegible]. Let me read the part that I regard pertinent to the point I am now making.

"Repeatedly I made it clear that if negotiations failed we would continue with the taking of testimony. (you estimated the balance of the trial time at fifteen days) on or about April 22 (after I completed the Pan Oceanic case which was scheduled to start April 1 and last three weeks).

"Please regard this letter as notice that the proceedings will be resumed in open court on April 22 at 10:00 a.m. (courtroom to be announced in the Law Journal)."

Just give me a minute and I will be through and I will turn to you to add anything you wish.

(Pause)

THE COURT: I am not fault-finding, but I do insist that there be thorough preparation so that the witnesses will not reveal by their testimony that

important subject have just been sketchily taken up with them by counsel. A witness reflects by the thoroughness of the testimony that what he testified to on a given subject has been gone into exhaustively by the advocate and not just the subject matter mentioned to the witness with the result that we spend an inordinate amount of time before we get from him all that is required.

Gentlemen, that's about all that comes to my mind right now, and now is your chance to say anything that you wish.

Mr. Morris?

MR. MORRIS: Yes, there is something I wish to add.

I stated to the Court that it was my view that it would be to the advantage of everyone concerned if a further attempt at settlement of this case were made by counsel and by the principals and parties involved in the litigation. I stated that I felt that it would be a mistake to continue with the trial of this case and that we should go back to the point we were at where the Court suggested the appointment of a special master to assist us in attempting to work out a settlement of this case. And I undertook to confer with my

co-counsel at the earliest possible moment with a view to getting consent from them to following that procedure, and I will undertake to do precisely that.

THE COURT: On that score, let me just answer very briefly that we are now at trial. Whatever is done with regard to negotiations, and I should say parenthetically that if I have accomplished anything worth mentioning at all it's because of my deep belief that negotiations are always in order, and I mean negotiations bring about an equitable peace the terms of which are approved by the Court.

I don't mean just getting rid of a case. I don't mean any of this blockbusting business where people without real notice of what really is involved capitulate to a settlement. I am talking about a well-founded, meaningful negotiation that brings about an approach to a desired result and doesn't leave bitterness and enmity at a state worse than it was to start off with.

I am talking about a quality negotiation. That's always in order.

But on that subject, let me just be very brief about it. I shall be glad to entertain it and help out in any way that I can but only provided the

the Court is overwhelmingly convinced that every one of the attorneys participating in this trial and in the proposed negotiations, if that should come to pass, have a zeal and a desire to bring to those negotiations that which would be demanded of them in the course of a trial and that they should be saturated with a desire to bring about an effective result because I know full well that that is a priceless and indispensable ingredient to any successful negotiations.

I am not asking counsel to suddenly acquire it; I am not asking counsel to inject themselves with that which may not be there, but only if it is there and only if that desire is strong enough will I interrupt this trial again. That can only be registered by your coming to the court in due time, if that is your choice, if that is what you have determined to do, and laying it clearly, openly and aboveboard before us so that we can go forward, if at all, in that direction.

In other words, the open sesame to that course is the way you come before the Court and convince the Court that that's what you really want and will work for.

Anything else, Mr. Morris?

MR. MORRIS: No.

THE COURT: Mr. Land, is there anything you wish to say with regard to what I placed upon the record?

MR. LAND: I think you stated it quite accurately.

THE COURT: What about you, Mr. Gold?

MR. GOLD: I have nothing to add.

THE COURT: How about you, Mr. Douw?

MR. DOUW: No. Thank you, your Honor.

THE COURT: In the light of the pressure I have already had set down in my mind to sit until 4:45. It is now 4:12. We will sit until 4:45 when I must leave in order to take care of another matter in chambers set for 4:45.

Let's go and cover as much as we can. We will use every minute.

(In open court)

THE COURT: All right, Mr. Morris.

MR. MORRIS: Frank S. Kristof.

F R A N K S. K R I S T O F, called as a witness by plaintiffs, being first duly sworn, testified as follows:

THE COURT: Mr. Kristof, you have a good clear voice. Will you keep it up because the acoustics

here are bad. Remember also you are in a courtroom and cannot talk as freely as you could outdoors. Just answer the question and don't go beyond that.

DIRECT EXAMINATION

XXX BY MR. MORRIS:

Q Where do you live?

A 175 Adams Street, Brooklyn, New York.

Q And where did you have your education?

A Stuyvesant High School, City College and Columbia University for my graduate work.

MR. MORRIS: May the record show we are introducing Mr. Kristof as an expert witness?

THE COURT: Very well.

Q What was the degree you received from City College?

A Bachelor of Business Administration.

Q And what year did you receive that degree?

A 1952.

Q You mean '42?

A '42.

THE COURT: Even you h[illegible]en't got the power to effectuate that.

Q Where did you take your graduate work?

A At Columbia University.

Q And what graduate degrees did you get?

A I have a M.A. from Teachers College in education and a Ph.D. from the graduate faculty.

Q And what year did you get your Ph.D.?

A 1952.

Q And in what field did you get your Ph.D?

A Economics.

Q Would you tell us what experience you've had in connection with your professional career? And I assume your career is as an economist?

A Yes.

Q And in the field of housing?

A That's correct. I started in the field of housing immediately after finishing graduate work at Columbia because I took a job as a housing market analyst at the Federal Housing Administration in New York City.

Q And what years were you on that?

A For three years, from 1952 to 1955.

Q And where did you go from there?

A In 1955 I joined the New York State Temporary Rent Commission as an economic consultant to the administrator.

Q And when were you there?

A From March, 1955, until October, 1956.

Q And where did you go from there?

A I then went to the Bureau of Census in Washingt D.C. as assistant chief of the newly created Housing Division at the Bureau of Census.

Q And what were you responsible for in that capacity?

A I was responsible for all the housing statistics produced by the Bureau of Census, which included the 1956 national housing inventory, preparation and carrying out the 1960 cencus of housing and the 1959 components of change survey.

Q And where did you go from the United States Bureau of the Census?

A I came back to New York City to take a position as the Deputy Chief of the Bureau of Planning and Program Research of the Housing and Redevelopment Board.

Q And during what period did you act in that capacity?

A Until March, 1963.

Q Is that New York Housing and Redevelopment Board the city agency that had jurisdiction of the development of the West Side Urban Renewal plan?

A It is.

Q Did you have anything to do with the development of that plan?

A I contributed some research work in connection with the development of the housing in that area, not with the plan per se.

Q And where did you go from there?

A I became the chief of the Bureau of Planning and Program Research in 1963 and remained as such until the HRB was dissolved and became the HDA.

Q And when was that?

A That was in approximately 1967. I continued in that position until -- I am sorry. 1966 -- and in 1967, when the HDA was created, then I became the assistant administrator for programs and policy.

Q Not HDA?

A For the HDA?

Q Was that the city agency that had jurisdiction of the administration of the West Side Urban Renewal?

A That's correct.

Q Now, did you during this period also act as a consultant to any other agency -- for the International Bank for Reconstruction?

A Yes, I did some consultant work for Inter-

national Bank for Reconstruction and Redevelopment in 1964. That was a four month leave of absence from the City.

Q And where was that work done?

A Thailand. That was in connection with Urban Renewal work in the City of Bangkok and other urban areas.

Q As the director of the Bureau of Planning and Program Research, will you tell the Court what your duties were with the Housing and Redevelopment Board between 1963 and 1966?

A We conducted most of the market analyses for individual sites, primarily middle income projects, known as Mitchell-Lama development, for the agency. We were also responsible later on for the development of the financial structure of these middle income housing projects, and did a number of generalized research studies in connection with the agency's activities, its broader activities in terms of Urban Renewal and housing development. We kept track, for instance, of the City debt limit for housing which we were encumbering to a large extent in conjunction with the City Housing Authority. The two agencies were both between them encumbering all of the housing debt limit of the City.

Q Did you, in connection with that, have anything to do with the West Side Urban Renewal area during that period?

A Yes. We were responsible for the financial structure of the housing that was developed in the West Side Urban Renewal area.

Q And when did you go with the Housing Development Administration which succeeded the Housing and Redevelopment Board?

A That was in 1967.

Q And what position did you have there?

A That's the one I gave you, Mr. Morris. Assistant administrator.

Q Of the programs and policy?

A Yes.

Q Would you tell us the nature of those activities?

A There I carried out the research program for combining the activities of the various housing agencies that were merged within the HDA, and one of the major activities there was to monitor the Rand Research Corporation's activities as well as carry out our own researches, particularly in the preservation of the housing stock which was becoming a serious problem at

the time.

We also monitored the financial activities and structure of the new housing that was being built by the development department.

Q Did you also act as a consultant to the National Commission on Urban Problems?

A Yes, I did.

Q Would you tell us what you did in that connection?

A That was popularly known as the Douglas Commission, and they asked me to do a study of the needs, the housing needs, of the United States over the next three decades. That was on the basis mostly of consus data, with which I was very familiar, and on the basis of that I made a projection of the amount of housing that would have to be built over the next 30 years from 19 -- well, I encompassed the period 1962 through the 1980s, a 30-year period, in assessing the amount of substandard housing that would have to be removed, overcrowded housing that would have to be removed, and the provision of housing for new household formation over that time period and estimating, as a consequence of that, the aggregate amount of new housing construction that would be needed to meet all those

needs in the United States.

Q Are you connected in any way with the Columbia University School of Architecture?

A Yes, sir, I am adjunct professor at the Columbia School of Architecture in the Division of Planning.

Q And what duties do you have at Columbia University as an adjunct professor?

A I teach two courses, one course in urban economics and the second course in housing policies. It is a seminar course in housing policies.

Q What has been the period of your affiliation with Columbia University in that capacity?

A Since the fall of 1965.

Q And are you still acting in that capacity?

A I am.

Q Have you done work for Ford Foundation as a consultant?

A I did.

Q Would you tell us what that was?

A I spent three months in Calcutta to provide a housing development program for the Calcutta metropolitan area based upon some funds that were being made available by the central government to the Metropolitan

Area Housing Development Agency which had recently been created and was a very similar type of agency as the Urban Development Corporation is.

Q And did you also act as a housing consultant for the Government of Brazil?

A Yes, I did.

Q And when was that?

A That was in 1968.

Q And how long a period did you do that?

A That was two months.

Q Under whose auspices was that done?

A That was under the auspices of Columbia Uni[illegible]ity which had the contract with the Government of B[illegible]il.

Q And what was the nature of the service you rendered there?

A I drew up a program for improving the census housing data collection system for the Government of Brazil, which was preparing its census of 1969 at that time.

Q When you left the Housing Development Administration, where did you then go?

A To the New York State Urban Development Corporation, which was just being organized at that time.

Q How long did you stay with the Urban Development Corporation?

A I am still with them.

Q And in what capacity are you there?

A I am the director of the Division of Economics and Housing Finance.

Q And what are your duties in connection with that directorship?

A I am responsible for the housing finance programs of all the residential housing built by the Urban Development Corporation in New York State, and that includes market analysis, determining the rents, the subsidy, the types of subsidy that are required to produce housing in the various types of sites and neighborhoods all over the state.

Q Is that the State of New York?

A State of New York.

Q Now, did you at my request prepare for me a list of the publications that you have written and published?

A I did.

Q I show you this schedule and ask you if this is the schedule you prepared?

A It is.

MR. MORRIS: I offer it in evidence.

MR. GOLD: Is this it, the one page?

MR. MORRIS: Yes.

THE COURT: May I point out to you gentlemen your cross-examination on that score may develop points, but right now all you are asked to consider is this list as a list he would have testified to in toto without the list as publications or papers that he authored. That is what he said. That is all it is offered for.

MR. GOLD: We have no objection.

THE COURT: Received.

(Plaintiffs' Exhibit 69 was received in evidence)

xxxx

THE COURT: Your publications have now officially become embalmed in the history of this case.

THE WITNESS: Thank you.

BY MR. MORRIS:

Q Dr. Kristof, what was your first contact with the West Side Urban Renewal area?

THE COURT: Let me tell you why I am interrupting. Through no fault of Mr. Morris, we had to have a conference in the robing room that lasted a couple of hours. We have been working hard on taking evidence

in this case and you could only testify, in any event, for another ten or fifteen minutes. You are about to launch into an entirely different phase. You have to come back anyway no matter how long we sit today and be cross-examined and so forth. I am perfectly willing to have you take the stand at the earliest possible time that is convenient. I would say tomorrow morning certainly would be ideal. We would then go forward with your testimony and complete it.

I am trying to point out to you that no one can be faulted because you didn't happen to finish your testimony. We can only take one witness at a time and then there are legal probelms. We have to resolve them just the way you have to resolve certain problems within your expertise and outside of the public's domaine. so to speak, when you do so. You get together with your colleagues and bat it out. That is what we have had to do. So I am afraid we will have to interrupt your testimony.

Will you return, please, tomorrow morning at 10:00 o'clock promptly to resume your testimony?

(Witness temporarily excused)

THE COURT: I would like to spend the rest of the time placing upon the record some of the rulings

that are pending.

There is pending before the Court a motion to strike testimony relating to oral representations made by employees and officials of the City of New York to purchasers of property within the Urban Renewal area (transcript page 1138). The ground asserted is that if such oral statements are alleged to have been incorporated into the written contract between the City and various purchasers, then they are inadmissible under the parol evidence rule as applied to written contracts.

After careful consideration of the disputed testimony and its relationship to the underlying issues of this litigation, we conclude that evidence of such oral representation is admissible. The motion to strike is therefore denied.

It is well established that where an agreement is reduced to writing in such terms as to express a complete contract, evidence of a contemporaneous or prior oral agreement on the same subject matter varying, modifying, contradicting or enlarging the written agreement is inadmissible in the absence of fraud or mistake. This ~~proportion~~ proposition of law we have strictly observed. However, where doubt or conflicting allegations

arise as to the meaning of provisions within the contract or difficulty as to their applications under the surrounding circumstances, their sense and meaning may be investigated and determined by evidence extrinsic to the written instrument. Williston On Contracts, 3rd Edition, Section 632, 632A and cases cited therein.

Thus, parol evidence which does not -- we emphasize "does not" -- contribute unambiguous terms of a written contract may be considered for the purpose of construing the intent of the parties and the objective to be advanced by their agreement.

See Trustees of Columbia University v. Griffiths, 352 N.Y.S. 2d 470 (1974); O'Neil Supply Company v. Petroleum Heat and Power Company, 280 N.Y. 50 (1939). See also Dancy v. William J. Howard, Inc., 297 F.2d 686 (Seventh Circuit 1961); Watkins v. United States 149 F. Supp. 718 (District of Connecticut, 1957).

endt

In the context of this litigation, the oral representations have been offered for the purpose of explaining the background circumstances leading up to the written agreements between plaintiffs and the City (that is Exhibit 14, the contract between Trinity and the City) which concededly incorporated the Urban Renewal plan, hereinafter referred to as "The Plan."

Plaintiffs thereby seek to set forth their understanding of the City's alleged commitment as embodied in the plan and upon which they allegedly relied in entering into the contracts. They contend that incorporation of the plan committed the City to a fixed number of low income housing units within the Urban Renewal area, and a fixed ratio of low income to middle income units in new buildings then contemplated.

The Federal Government contends, however, that the City's objective is limited to the creation of an economically and racially integrated neighborhood, as is stated in the plan, without any fixed limits or ratios, and that within that framework, the City is allowed to modify the plan subject only to consent of the owner or lessee of the specific property involved.

The annexation of the plan to the contracts in question shows that these contracts were viewed by

both plaintiffs and the City as an integral part of the development of the overall area covered by the plan. The oral representations heretofore offered do not contradict the plan and are consistent with its stated objectives, to wit, the creation of an integrated community.

Accordingly, they are admissible insofar as they show plaintiffs' understanding of the plan, the reason for its annexation to the contracts, and how the City intended to realize the objective stated therein.

Moreover, expert testimony has been adduced to the effect that the attitudes of residents of the Urban Renewal area, to the plan and its proposed modifications is a factor to be considered in determining whether such modifications, if executed, would cause tipping. To that end the representations are also admissible separate and apart from the contractual issues in this litigation.

We emphasize, however, that in admitting the oral representations for the purpose of clarifying plaintiffs' understanding of the plan, we made no determination at this juncture as to whether that understanding was reasonable, whether plaintiffs were entitled to rely upon the alleged representations or whether such representations did in fact constitute a correct interpretation of the stated objective of an economically and racially integrated

community. Those issued can be resolved only after all the relevant evidence has been adduced.

We invite counsel to advance reasons, if they have any, for exceptions to this and other motions disposed of simultaneously herewith, and to do so orally or in writing within 10 days from this date.

The second matter we take up -- and we invite your comments, if you have any, we think it appropriate to comment at this juncture on evidence concerning neighborhood conditions that has arisen from time to time so far and undoubtedly will continue.

Our reaction is as follows:

Although a witness is not qualified as an expert, he is nevertheless competent to testify concerning the neighborhood in which he lives so long as he testifies as to facts which he has personally observed or experienced.

He should avoid conclusory statements or those which are largely adjectival and not factual. Of course he is subject to cross-examination on the extent of his experience, the accuracy of his recollection, and any possible bias or prejudice.

Similarly, the adverse party may put on his own witnesses to testify as to their observations of the condition of the neighborhood. McCormack on Evidence,

Sections 10 and 11.

On occasion we have relaxed our insistence upon strict compliance with criteria pertaining to the admissibility of evidence and on such occasions we have indicated our reasons therefor. There happens to be authority supporting us in this respect. Indeed authority that has gone much further than we have.

Thus hearsay testimony and other evidence which would ordinarily be excluded in a jury case should be admitted in this trial if there is any question as to its admissibility. Firstly, the Federal Rules provide that where an action is being tried without a jury, the Judge upon request must hear and report the evidence in full unless it clearly appears that the evidence is not admissible on any ground or that the witness is privileged. Fed. R. Civ. P. 43(c). Se also Wright and Miller, Federal Practice and Procedure. Civil Section 2414.

Secondly, the Courts of Appeals prefer that evidence whose admissibility is debatable be admitted and not be excluded.

Indeed, there is judicial approval for the proposition that in a non-jury case the erroneous admission of evidence will rarely result in reversal.

This attitude has been expressed in strong

language by the Eighth Circuit.

"In the trial of a non-jury case, it is virtually impossible for a trial Judge to commit reversible error by receiving incompetent evidence, whether objected to or not.... On the other hand, a trial Judge who, in the trial of a non-jury case, attempts to make strict rulings on the admissibility of evidence, can easily get his decision reversed by excluding evidence which is objected to, but which, on review, the Appellate Court believes should have been admitted." Builders Steel Co., v. Commissioner of Internal Revenue, 179 F. 2d 377, 379 (8th Cir. 1950). See also McCormack on Evidence, Section 60; C. Wright, Law of Federal Courts, Section 96.

For the purposes of this case, there is approving authority that hearsay evidence such as the testimony by a witness as to what his neighbors have told him about their experience suggests further that perhaps the best course is to provisonally admit all evidence which is objected to with the announcement that questions of admissibility will be reserved until all the evidence is in.

At the end of the case, if the objections are renewed by motion to strike, a general policy of admission rather than exclusion should be favored. Evidence which is clearly irrelevant or incompetent should not be received,

however. McCormack on Evidence, Section 60 at 138.

Without assuming to be a man of any great wisdome, I would like to make the observation that the trial transcript will reveal that already, that we have had occasion to do exactly that.

Now the last deals with reasons given by owners of brownstones for their decision to sell.

You will remember that we had testimony on that from Mr. Haldenstein, and Mr. Land -- and properly so -- raised certain issues on cross-examination, including whether or not we were well-advised to permit the witness to go forward in the manner that he did.

Without reciting every bit of that testimony that is pertinent to this ruling, we would like to observe the following:

There was testimony by Mr. Haldenstein as to the reasons given him by brownstone owners for their decision to sell their brownstones and move out of the Urban Renewal area. That testimony was objected to on the ground of hearsay.

We have in the interim reviewed the law on that question and find a clear statement to the effect that declarations of present existing motives or reasons for action are admissible as an exception to the Hearsay Rule

where declarant's motive or reason is relevant to the litigation.

Wigmore on Evidence, Third Edition, Section 1729. See also American Cooperative Serum Associates against Anchor Serum Company, 153 Fed. 2d 907 (Seventh Circuit, 1946) Cert. denied 329 U.S. 721 (1946.)

With that, gentlemen, I say good night.

We adjourn, Mr. Clerk, until tomorrow morning promptly at 10:00 o'clock.

(Adjourned to Thursday, May 9, 1974, at 10:00 A.M.)

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
Dinah Sours (Resumed)	2357	2359		
M. Paul Friedberg	2400	2446		

EXHIBIT INDEX

Plaintiffs	Identification	In Evidence
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Trinity EpiscopalSchool Corp.
et al
vs. 71 Civ. 4315

George Romney, et al.

New York, New York.
May 9, 1974 - 10:00 A.M.

(Trial resumed.)

THE COURT: Good morning, gentlemen. Please proceed with the witness.

MR. LAND: One matter, your Honor.

THE COURT: Yes, Mr. Land.

MR. LAND: To speed the trial processes and to eliminate the calling of witnesses who may not be necessary with the Government, I discussed several matters with Mr. Morris and they are as follows:

(1), As to the volume study prepared by planning consultants employed by the City of New York in respect to the West Side area, I have given to Mr. Morris those two volumes with the understanding if he has no objection they will be received in evidence without the need for the attesting sponsor and if the attesting sponsor were called he would testify he prepared these documents based upon his best ability and beliefs and the matters contained therefor are true and accurate but that is not a concession

that the facts and material contained therein are in fact true.

(2), I have given to Mr. Morris a study prepared by the City as to Community Planning District Number 7 which includes the West Side area. Similarly, I will introduce that into evidence without the need of calling the attesting sponsor and if the attesting sponsors were called they would testify the material is to the best of their ability to get the facts and the facts are true, but that is not a concession that the facts and material contained therein are in fact true.

Additionally --

MR. MORRIS: With respect to that, your Honor, may I say those are very voluminous documents and I will not be able to read them except over the weekend. So that with your Honor's permission I would like to respond to that on Monday after having read the documents.

THE COURT: All right.

MR. LAND: Additionally, in addition to calling Mr.Green, the Department of Housing and Urban Development, we also plan to call Mr. John Maylott and Mr. Jed Abrams who worked on and prepared the two documents made by HUD and which are already in evidence.

I would like to dispose of the need to call Mr.

Abrams and Mr. Maylott upon the stipulation by Mr. Morris that if these two gentlemen were called they would testify that they prepared these documents to the best of their ability upon what they believe the rules and regulations of the Department of Housing and Urban Development require; that, however, is not a concession on the part of Mr. Morris that the National Environmental Policy Act required HUD to make a detailed study of tipping in respect to its environmental statement.

Finally, as to Mr.Badillo, Rangel and Sutton, we may dispense with their testimony because the purpose of their testimony would be that the approximately 2500 figure which is specified in certain documents in the Board of Estimate, being the approximate number of low income persons -- minimum of low income persons -- represented a political compromise between the interests of various groups.

I think there has already been some testimony about that by Mr. Fried, but I would like to make that clear and stipulate to that.

Also, in respect to the ratio of 70-30 per cent low income tenants within the West Side area, that that likewise represented a political compromise between various groups and if we can get -- I think also there has been some testimony on that already. I would like to stipulate

to that. If we can do that we can dispense with all the Government's witnesses except for Mr.Green and would further do away with the introduction of any further documents by the Government.

THE COURT: Mr. Land, I would be less than candid if I didn't say that the Court is greatly encouraged by your recital and it seems that our conference yesterday is already productive.

Your enumeration, however, of proposed stipulations have no weight until, of course, I have Mr. Morris' concession on the record.

I would suggest as a practical way to go about this, and I hope you will find some wisdom in it, that you sit down and hammer this out and have it reflected in a document, in a piece of paper, that can be read right into the record. In fact, it ought to be initialed by both of you, that is, exactly what you are going to say to the Court and so that when you get in here you don't go and start spending half an hour straightening out words.

"This is it, Judge. We have agreed on it. Here it is."

Recite it into the record and that will be nailed down and there will be no question with regard to it. Do it that way. But you are going about it

in a splendid way and I am sure Mr. Morris will meet and do his share. He will meet your own spirit of cooperation and the Court is indebted to counsel for their zeal that means a great deal to me.

Very well. Please proceed.

F R A N K S. K R I S T O F resumed.

THE COURT: Good morning, sir. You recognize you are continuing with your testimony under oath.

THE WITNESS: Yes, sir.

DIRECT EXAMINATION (continued)

BY MR. MORRIS:

Q Mr. Kristof, when did you first become acquainted and become active or participate in the activities in connection with the West Side UrbanRenewal Plan?

A During the period that I was with the Housing and Redevelopment Board beginning in December, 1960, and thereafter until I left the Housing and Redevelopment Board, the then Housing and Development Administration.

Q Which was what date that you left?

A I left on November 30, 1968.

Q So that during the period between December, 1960, and November 30, 1968, you did do work in connection with the West Sid- Urban Renewal Plan, is that correct?

A I did.

Q Would you tell us what that work consisted of and what your activities were with respect to the plan?

A My work was essentially analysis of the market strength of the West Side Urban Renewal area for the purpose of marketing conventional housing and middle income housing in that area and also for the commercial space in the middle income housing.

Also to set up the financial structure, at least to monitor the financial structure of the housing companies that were under production during the period that I was with the HRB.

Those were my primary activities with respect to the West Side Urban Renewal area. Other than that, I had more general discussions about the preparation and development of the individual housing companies and whether they should be co-ops or rental developments, but outside of that, that was the specific activities in connection with the West Side Urban Renewal area.

And in that connection, of course, I had to examine the area, walk it, examine the individual sites as part of that general function.

Q And did you discuss the project and the various facets of it that you were involved in with the officials in charge in the City of New York, the HRB officials and

the various other City officials involved?

A Yes, I did.

Q And did you on occasion make appearances before the City Planning Commission and the Board of Estimate in connection with any of the projects?

A Not specifically, no.

Q Did you prepare material for those appearances for whoever did appear?

A I did.

Q In connection with various facets of the West Side Urban Renewal area program?

A Correct.

Q Did you participate in any way in the development of the plan itself from the time that you came with the agency in 1960 until the plan was approved in June of 1962?

A Only in general, in general connection. I had no specific input in the actual preparation of the plan. I was in discussions that led up to the preparation of the plan.

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Q During the period of execution of the plan which followed the approval by the board of estimate from June 1962 until you left the agency, did you continue to become active in work in connection with the plan?

A Yes.

Q When you left the agency on November 30, 1968, did you continue to keep yourself informed with respect to the situation in the West Side Urban Renewal area?

A I did.

Q Would you tell us what you did and how you kept yourself informed?

A I had extensive discussions with my fellow HDA people from time to time and of course I kept abreast of the general activities that were going on from the daily reading of the New York Times and other papers, but I had no direct activities, official duties, with respect to the West Side Urban Renewal area thereafter. It was just a matter of keeping abreast of the events that were transpiring and -- for instance, I kept fairly close tabs with the progress of marketingof the housing inthat area thereafter, and some of the events that took place in that connection.

Q Did you have any contact with any of the projects in theWest Side Urban Renewal area as a result of your activities with UDC?

A Not directly.

Q Didn't you have some contact in connection with Site 4?

A That was a proposal, yes.

Q Wasn't there a proposal --

A That was a proposal to build, that UDC would build low rent housing on that site.

Q Did you have anything to do with that?

A Not with the proposal. I had some reactions to the proposal,but I did not have anything to do with the proposal.

Q Did you make recommendations to UDC with respect to it?

A I expressed dismay at it.

Q You were familiar with it?

A Yes.

Q You did have conversations with respect to it?

A That's correct.

Q Are you familiar with the concept of tipping point?

A Yes.

Q Would you describe to the Court what is meant by the term "tipping point"?

A "Tipping point" is a sociological concept in

essence, because it is not something very, very rigidly or rigorously definable. It describes a set of conditions in any area at which the normal relationships that have existed in that area would begin to change markedly.

Usually it describes a normal neighborhood with stable relationships, family relationships and housing conditions changing to a different type of relationship because of the rapid ingress of new families and the departure of the existing families at a pace that is much more rapid than normally occurs in the neighborhood, so the characteristics of the neighborhood change rather radically within a short period of time.

Usually it is from a given economic group to a lower economic, ~~social~~ socio-economic group. I think that, succinctly, as well as you can be succinct, describes that.

The tipping point is the point at which that set of conditions will have been created that will lead to a change, to the departure of existing families in a neighborhood in a rapid rate.

THE COURT: Please go a little more in depth into the word "change." What do you mean by that?

THE WITNESS: Yes, your Honor.

We measure change by the rate at which people move out of an area and move into an area. That is

measurable because census data does give us information on that, and some areas can be measured as to the rate which people move in and move out.

It is in that sense that we can measure that kind of change.

THE COURT: So the change can be either for the better or for the worse?

THE WITNESS: That is correct, your Honor.

THE COURT: Proceed.

Q Dr. Kristof, can you tell me what is meant by the term "Urban Plight"?

A That is a term that describes a large number of characteristics and they will be different in different areas. It describes physical conditions as well as social conditions and they are also closely related to economic conditions in an area.

Blight in its physical context simply means the deterioration and poor maintenance of the housing and the physical facilities in a neighborhood, including the streets and garbage removal services, police services, the literal ability of people to walk safely through the neighborhood from their home to stores and transportation facilities, in relative safety.

Those are physical changes.

There are also involved the frame of mind of the people who dwell in the area, whether they feel comfortable there, whether they feel safe there, and whether they regard it as a place they want to remain and are happy there.

When "urban blight" is applied to a neighborhood it indicates that that neighborhood is losing its desirability as a place for normal families to remain and remain happily and contentedly.

Those are, I think, the broadest --

Q Would you say that elements of urban blight are issues and are involved in the development of theWest Side Urban renewal area?

A Yes.

Q Describe "urban decay."

A Urban decay is simply a synonym for urban blight. It is another term to describe the same thing.

Q Would you describe "urban design"?

A That is a set of physical conditions that is associated with attempts to cure conditions of urban blight and urban decay in terms of removal of facilities that have become run down and dangerous or sub-standard or unlivable, and the replacement with new physical facilities and public facilities in an area to improve the area's

desirability and livability and general social conditions, and economic conditions also.

Q Would you say that urban design is an issue in the development of the West Side Urban renewal plan?

A Yes, it is.

Q Can you describe "quality of the built-in environment," what does that mean?

A That is a judgmental thing and depends upon the views of the individuals looking at it. The quality of urban development -- is that the term?

Q The quality of the built-in environment.

A It is a judgmental aspect of the whole discusson and in terms of the general desirability of the environment of a given neighborhood to families with respect to their willingness to move into the area as their place of residence and neighborhood.

Q Would you say that was an element to be involved, to be considered, in the development of the West Side Urban Renewal plan?

A Yes.

Q Dr. Kristof, I am going to ask you a hypothetical question which will assume certain facts in which are the plaintiffs' position in this case, and ask you to give me an answer to this question. It is a long question and

presents the facts as I understand them to be.

I will ask you to assume there is an urban renewal plan for the conservation, rehabilitation, and rebuilding of the then deteriorating West Side UrbanRenewal area located between 87th and 97th Streets and Central Park West and Columbus Avenue which was approved by the board of estimate in June of 1962.

I will ask you to assume that the plan is put into execution shortly thereafter and called for the conservation of the good buildings in the area, the rehabilitation of salvageable buildings, and the demolition of deteriorated buildings, followed by the construction of between seven and 8000 units of new middle income housing, with a total of 2500 units of low income housing in the area and its immediate perimeter, with a ratio in the new middle income buildings of 70 per cent middle income units and 30 per cent low income units.

Assume that there is a total of 2441 units of low income housing constructed, including the perimeter public housing projects with 517 units of low income housing, and assume 136 units are under construction with low income housing making up a total of 2577 units of low income housing completed or in construction.

Assume that additional units are in planning,

but not in construction and that there are over 200 families on welfare occupying apartments financed under other programs as well as squatter families, the exact number of which is unknown, and low income families which have not been relocated out of the area, the exact number of which are likewise unknown, and I ask you to assume that the income limits allocatable to the units of 236 housing contained in Leader House, Columbus Manor and Westwood House are within $500 per annum of the current public housing limits.

Would you say that the area has passed the tipping point and that if the conditions that exist there now continue, the conditions will have been created to discourage middle income families from remaining or moving into the area, thereby destroying the expressed intent and purpose of the Urban Renewal plan to create a community on an integrated economic, cultural, ethnic and religious basis, and thus resulting in the waste of large sums of money invested in the area by the Federal, State and City Governments, and by private individuals and entities.

A Yes.

THE COURT: The witness was fast.

The question included the words "would you say" instead of "have you an opinion."

MR. MORRIS: I am sorry. I should have said that.

THE COURT: He has beat us to it. He said yes, and he did not expand.

Having answered yes, you may now put the next question to him.

What is that opinion?

Q I have another hypothetical question.

THE COURT: You have to get an answer. You have to get the reasons. Why does he say that? All he has sid is yes. He has an opinion.

What is that opinion?

THE WITNESS: I think that to the extent that the area begins to provide facilities for more than 2500 low income families in the area you are beginning to endanger the marketability of additional or even the existing housing to middle income families as well as creating conditions that will discourage some of those families from remaining there and leaving them to move out.

THE COURT: Are you finished?

THE WITNESS: Yes.

THE COURT: Proceed.

Q Would you say that that situation described in the hypothetical question would give rise to a situation

where the tipping point, which you described before, would be exceeded?

A Yes.

THE COURT: Would the tipping point occur?

Q Would the tipping point occur?

A Yes.

Q Would that mean in turn the flight of middle income families and an increase in the number of low income families in the area?

A Yes.

Q Would that in turn mean that the terms of the Urban Renewal plan which called for an integrated area would not be accomplished?

A Yes.

Q Would that also in turn mean that the investment made, which is in the hundreds of millions of dollars, in the area, would in terms of creating an integrated community have been wasted?

A Yes.

Q I have another hypothetical question.

Dr.Kristof, I ask you to assume there is an Urban Renewal plan for the conservation, rehabilitation, and rebuilding of the then deteriorating West Side Urban Renewal area located between 87th and 97th Streets and Central

Park West and Columbus Avenue, which was approved by the board of estimate in June of 1962.

I ask you to further assume that the plan is put into execution shortly thereafter and calls for the conservation of the good buildings in the area, the rehabilitation of salvageable buildings, and the demolition of deteriorated buildings, followed by the construction of between seven and 8000 new middle income units with a total of 2500 low income units in the area and its immediate perimeter, with a ratio in the new middle income buildings of 70 per cent middle income units and 30 per cent low income units. 2441 units of low income housing are constructed including the perimeter public housing projects of 517 units of low income housing.

Assume 136 units are under construction of low income housing making a total of 2577 units of low income housing completed or in construction.

Assume that the projects in planning are completed and include the construction of 160 units of public housing on Site 30 and 270 units of public housing on Site 4, and that there are a total of 3029 new units of public housing including the perimeter public housing projects with 517 units of public housing, and that there are over 200 families on welfare occupying apartments financed under

other programs.

Assume the income limits allocatable to the units of 236 housing contained in Leader House, Columbus Manor and Westwood House are within $500 per annum of the public housing limits.

Do you have an opinion as to whether that area will pass the tipping point and that conditions will have been created to discourage middle income families from remaining or moving into the area, thereby destroying the expressed intent and purpose of the Urban Renewal plan to create a community integrated on an economic, cultural, ethnic and religious basis and thus resulting in the waste of large sums of money invested in the area by Federal, State and City Governments and by private individuals and entities. Do you have an opinion on that?

A Yes.

Q Tell the Court what your opinion is.

THE COURT: May I just say before you begin, I do not believe that the language is appropriate that says "passed the tipping point." Arriving at the tipping point, will tipping occur? And then you may ask the degree into the tipping point area, so to speak. That is another proposition.

Would you mind changing that then, that portion

dealing with tipping.

That portion, Doctor, consider as though it had said, the question put to you: Will tipping occur or take place?

Q Or arrive at the tipping point?

I so amend my question.

A Yes. I do think that this construction would certainly discourage new middle income families from moving into the area as well as discourage the existing middle income families from remaining in the area.

This, of course, is a judgment. As I earlier stated, the concept of tipping point is a judgmental thing on the part of large numbers of people and people will disagree on the subject, but on the basis of my experience in doing market analyses all over the State of New York and all over the City of New York I believe, it is my judgment, that conditions will have been created which will not retain the improvements in the viability of the West Side Urban Renewal area that had been reached in the early 1970s, and it is currently enjoying, and still has some way to go, depending on how you continue to develop that area. There is absolutely no question in my mind that future developments in this area and the kind of housing that you build in this area will affect its desirability for families,

middle income families, which are sorely needed to retain the viability of that area and its long-range health and stability.

MR. MORRIS: That is all I have.

THE COURT: Cross-examine.

CROSS-EXAMINATION

BY MR. LAND:

Q Dr. Kristof, during the early 1960s, were you familiar with what was planned for Site 36 in the West Side Urban Renewal area?

A If you give me the address of the site --

Q I believe I can. The address is bordering on the east side of Columbus Avenue between 89th and 90th Street in which there is currently located a cooperative apartment known as the Turin House.

Do you know what was originally planned for that particular site?

A I do not. I should say I don't remember. I do not recall.

Q Dr. Kristof, in your definition of tipping you spoke of a rapid population change, is that correct?

A No.

Q Did you use the word "rapid" in terms of your definition of tipping?

A I used the word "rapid," yes.

Q In what context does the term "rapid" apply?

A It applies in a situation where deterioration becomes serious. When it becomes serious in an area that has tipped, then the migration of people out of the area will become very rapid. The tipping point simply, if I may elaborate, the tipping point means you have set up -- you have created a set of conditions whereby people will find the area less desirable and more people will start moving out, will start moving out, but it may take some years before you really get rapid move-outs relative to people willing to move in.

Q When you say people moving out and people moving in, I assume for every person that moves out there will be sombody else moving in, is that not correct, or would the building simply be abandoned?

A You may have vacancies created in an area. So that means more have moved out then will move in.

Q I am talking about moving out and moving in.

Is that in terms of a change of type of person moving out and moving in?

A Sometimes, yes.

Q Let me ask you this, Dr. Kristof: Assume a community of 100 homes and in each of those homes there lives a millionaire and during that period of time, during the period of one year, each and every homeowner, each and every millionaire homeowner, sells his property and moves out and in place of each and every millionaire there is now a person residing who has a net worth of only $500,000. There has in your definition been a rapid change of population. Has that area tipped?

A No.

Q Why not?

A Because the concept of tipping implies also a set of undesirable neighborhood conditions, deterioration occurring in an area.

THE COURT: Not only implies but it's an integral criterion in connection with the resolution of the issue of tipping, is it not?

THE WITNESS: Yes.

THE COURT: It is a factor that is as big as all outdoors, isn't it really so?

THE WITNESS: Yes.

Q You used the words "neighborhood conditions"?

A Yes.

Q What do you mean by neighborhood conditions? What neighborhood conditions should we look at to determine whether a particular community will tip?

A There are two types of neighborhood conditions. The sociological which are associated with the characteristics of the population that live there and of those that are moving into the area as against the characteristics of the population that are tending to move out of the area.

And the second aspect is the physical aspect, the condition of the housing, whether it is being maintained or whether it is deteriorating, the condition of the streets and the services, the litter and the garbage on the streets and the maintenance of the sidewalks and other public facilities; the feeling of people with respect to the safety on the streets, literally safety on the streets, the ability of people to walk around the streets without conditions of fear existing in back of their minds about going to transportation facilities or to the store. A general feeling of security about a location. That's all associated with neighborhood deterioration.

Q You mentioned physical characteristics. You said the conditions of the house, the condition of the streets, the condition of garbage and the condition of sidewalks, is that correct?

A And other things.

Q What other things?

A Specifically, the other facilities -- police and fire services, whether they are sufficient in quantity and quality to adequately service this area and maintain it as a secure and safe neighborhood.

Q Is there anything else?

A I mentioned the maintenance of the properties.

Q You have.

A I think I have got most of them.

Q Is there anything else that we have to know about that are neighborhood characteristics before we can make a determination on tipping?

A I am sure there are some I haven't remembered.

THE COURT: He has a right to press you before he reveals or calls your attention to other factors. So take your time, exhaust your memory and then, if you cannot come up with anything, he will go forward.

THE WITNESS: I mentioned the quality of sanitation services.

Q You have.

A Dirt, litter. And another facet that affects the safety and blighted conditions of the neighborhood is one that I have not mentioned. It is the number of people that are lounging around and hanging around on the streets, delinquents from school or unemployed are engaging in illegal and dangerous activities that contribute to this condition of blight in the neighborhood. Drug addition among these people is a major contributor to the blighted neighborhood. And other illegal activities.

THE COURT: That doesn't mean anything, other illegal activities.

THE WITNESS: Yes. Robbery, muggings, assault and on occasion even murder.

I think that's another major component that I had not discussed earlier.

Q Is there anything else?

A I think that's about it.

THE COURT: All right, proceed.

Q It was then solely the factors of which you have just testified upon which you based your opinion as to tipping, is that correct?

A That's correct.

Q Is the tipping phenomenon, doctor, tipping as to racial changes or tipping as to economic changes?

A Both.

Q Would you explain that a little more in detail?

A Well, when you have an excessive number of low income families moving into an area relative to those that had been there before, it is connected also racially with the fact that in our society low income families today are predominantly blacks and Puerto Ricans. One hundred years ago if you had asked me that question, they would have been Irish, and 75 years ago it might have been Italian. So that racial characteristics is not a generic part of the definition. It is just a correlation of low income with the racial and ethnic characteristics of the people at a given point in time.

THE COURT: Of course, that was a rhetorical comment on your part when you said if you were asked that 100 years ago. You don't look 100 years to me.

THE WITNESS: Didn't quite make it.

Q Doctor, do you know anything about the number of elderly in the City of New York who are low income?

A Yes.

Q What do you know?

A That persons 65 and over in the City of New York comprise about 11 percent of the population.

Q Low income?

A No. They comprise 11 percent of the population. Of that group, a large proportion can be categorized as low income, perhaps as much as half.

Q As to that half of the elderly in New York City which you would characterize as low income, what percentage of those persons are black or Puerto Rican?

A A small percentage.

Q In other words, your characterization that you associate low income to black and Puerto Rican does not apply as to the low income elderly, is that correct?

A That's correct.

Q Are you familiar with the current plans for Site 30 in the West Side Urban Renewal area?

A No, I am not.

Q You are not familiar with it?

A No.

Q Do you know how many units are planned to be built there?

A I think something less than 200.

Q Something less than 200. Do you know how

many units of something less than 200 are planned for the elderly?

A No, I do not.

Q You don't know. It is your opinion, though, the construction of Site 30 as a low income housing project will cause this area to tip; that is your testimony, is that correct?

A Right. The answer to that is no.

Q The building of a Site 30 wil not cause the area to tip?

A The answer to that is no, because when you make that statement as a categorical yes or no, I would have to qualify it.

THE COURT: Explain that to me. I don't quite get what you are trying to convey.

THE WITNESS: What I am trying to convey is the building of a single structure as low income, single structure, is not going to be sufficient. The concept of tipping is not that exact. I say it will contribute towards conditions. That's a statement that was earlier made and that is a statement I stand by. There is no such thing as anything tipping like that. This is why I don't even like the concept, I don't like the term.

Q Let me ask you this, then: Assume a community

has a quarter of a million people -- assume it has 200,000 people of which 30 percent of the population are either black or Puerto Rican of varying economic conditions. Assume that one of the non-black or Puerto Rican people sells their house to a black or Puerto Rican.

In your judgment, would that one change itself be some indicia of tipping? Just the one.

A No.

Q How many do you have to have?

A It depends on the size of the community.

Q I said assume 200,000.

A 200,000. Well, I would say that -- what was your assumption, 30 percent --

Q Are black or Puerto Rican of varying economic ranges.

A Again, the answer to that question also requires an answer to the economic condition of the families to which apartments are being sold. It's an economic, not a racial -- the change in any given neighborhood consists of both economic as well as social characteristics. Economic characteristics of such families are only an indication and it depends on the individual families and their characteristics. You can't make assumptions on a family by family basis.

Let me take your point. If over a period of a short time in this community of 200,000, 30 percent minority, which is not really relevant because it it the economic structure of that community which is relevant and the economic condition of the families moving in which is relevant in terms of tipping, neither of which you have described to me so that I can't answer your question yes or no.

Q In other words, your tipping concept is not a racial thing so much as it is economic, is that correct?

A Primarily, yes.

Q Primarily economic. All right.

A Economic as a proxy for the differences in the social attributes of the people that are coming in. That's almost a class distinction rather than a racial or economic.

THE COURT: May I interrupt you, Mr. Land?

I don't quite understand, doctor. From your answer one might gather the impression that an economic factor is distinct and apart from racial and other characteristics of human beings. However, as against what you just said you have said before that with regard up in the economics of the neighborhood

are racial and other characteristics.

THE WITNESS: Yes, sir.

THE COURT: It's not separate and apart?

THE WITNESS: They are not. They are correlated. That's the point. They are correlated, of course. They are not causative. This is the only thing I want to get.

THE COURT: All right.

Q In other words, before any qualified person could make a judgment as to whether a community is about to tip, has reached a plateau or is in the process of tipping, that person would have to know what is the relative economic makeup of the community involved, is that not correct?

A That's right, yes.

Q You have to know. All right.

In considering the West Side Urban Renewal area, what in your judgment is the relevant community which we must study in order to reach a judgment as to tipping?

A The area itself and it's immediate surroundings.

Q Could you give us a boundary? Let me ask you this: Would a fair boundary be from Central Park West to and including Riverside Drive from approximately

105th to 110th Street and south somewhere to approximately 72nd Street? Would that be, in your judgment, the relevant community which contains within the West Side Urban Renewal area?

A Yes, in its broadest context, yes.

Q As to that community, what percentage of the people living there are, in your definition, low income?

A Well, that's a question of fact I can't really answer.

Q Do you know?

A I can give you an approximation. I do not know. That is a question of fact I would have to look up.

Q And you haven't looked it up before you came here to give your expert testimony, is that correct?

A I say if you want a precise answer, I can't give you a precise answer. I did not look up that fact, no.

Q What is your estimation of low income?

A In that area?

Q Yes, right now, today.

A Probably about 35 to 40 percent.

Q What is the maximum income -- let me ask you this question.

In considering a person of low income, do you think in terms of family structure or of individuals, that you consider a family a low income family as opposed to low income individuals? How do you make that judgment, families or individuals?

A You can take families as individuals in that they live in a household. You must use a complex of numbers to make that judgment.

Q Your 35 to 40 percent figure, was that 35 to 40 percent of the raw population or individuals?

A Household heads.

Q What in your judgment is the maximum income that a low income person may have such that one dollar more will make him middle income?

A I couldn't answer that question. That's cutting it much too closely.

THE COURT: All right, next question.

Q Give me the economic range of a person of low income, their annual income. What is the approximate range?

MR. MORRIS: As of what period are we talking about?

MR. LAND: Today.

A Starting with a one-person household, I would

say the range of his income is low income up to about $4,000 today.

Q Suppose you have two in a household. What would your definition of low be?

A Two in a household would be income of up to about $5,500.

Q Three in a household?

A About $6800.

Q Four in a household?

A About $7800.

Q Five in a household?

A $9000.

Q Six in a household?

A $10,000.

Q Seven in a household?

A $10,500.

Q Eight in a household?

A That's about as high --

Q So it is your testimony that you are of the opinion, based upon what you have read and know, that of the total community which is relevant approximately between 35 and 40 percent of the families having members of the household between one and seven and above, that the maximum income of such families is not more than

$10,500?

A Within those sizes, that is my estimate.

THE COURT: Are you going to something else now?

MR. LAND: No, I am going to go for a long time.

THE COURT: On this particular point?

MR. LAND: I have quite a bit more.

THE COURT: Suppose we take a short recess. Announce it. For a few minutes.

(Recess)

Tk 4

THE COURT: Continue.

MR. MORRIS: Your Honor, Mr. Land indicated that he will have a lengthy cross-examination of Dr. Kristof.

Dr. Kristoff has just informed me that he has a luncheon engagement and would like to be excused a little earlier than the Court would ordinarily recess because of that.

THE COURT: What time is it?

THE WITNESS: It is at 12:00.

THE COURT: We would like to oblige you.

Have you other witnesses?

MR. MORRIS: I do.

THE COURT: We will carry on then for another half hour. Would that be enough?

THE WITNESS: I need a quarter of an hour to get there.

THE COURT: We will carry on to a quarter to 12:00 and then you must be back here at two o'clock.

Q As to the relevant community which you have defined, what is the total population of that community?

A Possibly about 200,000 persons, 180,000.

Q Of that total population, which you estimate to be between 180 and 200,000, what percentage of that population

is black?

A I would say about 15 per cent.

Q What percentage of that population is Puerto Rican?

A Roughly another 15 per cent.

Q In other words, the total black and Puerto Rican population of the relevant community is approximately 30 per cent of the total, is that correct?

A That's correct.

Q What is the approximate population of the City of New York?

A 7,800,000.

Q Of that approximate 7,800,000 what percentage is black?

A About 18 per cent.

Q What percentage of that population is Puerto Rican?

A About 10 per cent.

The black figure may be as high as 20.

Q You have made similar studies as to tipping with respect to other communities within the country?

A Not studies. That is not the way I would ascribe it. These are observations, observations over time. Not studies. I can cite no such studies that I have form-

ally engaged in.

Q Have you offered opinions as to tipping in other communities in the United States?

A I have not.

Q This is the first time you have been called on to offer an opinion as to tipping within a community?

A Yes.

Q The first time you have ever made a study of that of tipping, is for this trial?

A That's correct.

Q Doctor, of the total population in the City of New York I believe the approximate population of black and Puerto Rican is, in your estimate, about 30 per cent?

A That's correct.

Q That would be the same percentage as to the relevant community we are currently studying?

A That's correct.

Q It is your testimony that the relevant community right now is in the process of tipping, is that correct?

A I didn't say it was in the process of tipping now.

Q Is it in the process of tipping now?

A It is on the balance, I would say. It depends on what happens from here on in.

Q It is on the balance?

A Yes.

Q With the same percentage of black and Puerto Rican population as a relevant community, is the City of New York itself in the balance of tipping?

A The question has no meaning. When we talk about tipping we don't talk about cities. We talk about neighborhoods.

For instance, we have totally black neighborhoods in many areas of the city. We have virtually totally Puerto Rican neighborhoods. We have totally, virtually totally, white neighborhoods in different areas of the city.

You can't ascribe -- tipping doesn't have racial connotation in that context.

Q Are there other communities within the City of New York that have a ratio of black and Puerto Rican population of 30 per cent of the total?

A I am sure they have. I am sure there must be.

Q Those communities likewise then are in the balance of tipping?

A But I didn't define tipping that way.

The answer is no.

THE COURT: The answer is no.

Proceed.

pgb-5 Kristof-cross

Q The balance of tipping, though, as to the relevant community we are now studying, is one in which, according to your definition, between 35 and 40 per cent of the total population has an income of less than$10,500 and of which the total population of between 180,000 and 200,000, approximately 30 per cent are black or Puerto Rican.

Given those characteristics you say that this relevant community is in the balance of tipping, is that correct?

A The total community?

Q Yes.

A No. No. No. I do not say that. I did not say that.

Q The total community is not in the balance of tipping?

A No. No. Some sections of that community are quite solidly white and going to remain that way without any major changes in conditions.

Q Some sections --

A Within that overall area that I described. I didn't describe that as a homogenous community.

Q That is the relevant community studied in terms of tipping? You said that?

A I said you would have to be aware of conditions

in the overall community, yes; but in terms of tipping any one portion or another portion of that community can individually tip.

Q You testified now that there are concentrations of -- what was --

A White middle class, upper middle class.

Q Those concentrations are not --

A Not likely to tip.

Q Or in the balance of tipping.

When you say "not likely to tip" --

A Unless there are major changes in the typ of facilities and maintenance.

Q Assuming the relevant population in the community which we have just defined, and assuming that the change in that community presently envisaged is the construction of a low income housing project between 90 and 91st on Columbus Avenue containing a total of 160 units, and assume that that housing project will house approximately 600 persons.

Will that addition to the curren[illegible]ulation mix and economic mix cause tipping?

A No.

Q You are sure of that?

A Yes, I am sure.

Q Why?

A Because, as I stated earlier, it is not a single fact that is sufficient to do it.

When I described, answered yes, to Mr. Morris' hypothetical statement earlier, if you listened carefully, it was a long statement, it said it would create conditions wherein middle income families would be less willing to remain in the areas or willing to move into the area, and the context of tipping is in that context.

Q I understand.

In other words, to some extent the hypothetical was itself a definition of tipping, is that correct?

A I looked at it very carefully before I answered that question.

Q His hypothetical was in itself a definition of tipping to some extent?

A Yes.

Q You did not interpret his hypothetical as the conditions which currently exist in the relevant community?

A If the facts are consistent with the hypothetical question then my answer would follow.

Q He particularly directed your attention to middle class people moving out and low income moving in, a rapid acceleration --

A I didn't say "rapid." I said the willingness of middle income families to remain in this area and the willingness of other middle income families to move into this area.

Q You testified that within the relevant community there are segments of white middle class families, is that correct?

A Yes.

Q In your judgment, those families are not endangered by the conditions that exist there currently after tipping, is that correct?

A That's correct.

Q Where do these white middle class families reside?

A West End Avenue, for instance, the housing on both sides of West End Avenue between -- wherever the residential section begins, 68, 70th street and going up as high as 90th, 96th Street -- there is an area which is a solid white middle class area where the housing is basically good, 1920 housing, it has been relatively well maintained, and it has been a stable area for a long time. There have been racial changes in the area but there have been no detectable deterioration or unwillingness of white families to continue to move in, middle income.

Q Moving more towards the Hudson River, how about the Riverside Drive area? Would you give the same characterization to that area as you have given to West End Avenue?

THE COURT: From 70th to 96th?

A Yes. There are minor differences. A large number of buildings on Riverside Drive have been chopped up and made into single-room rooming houses during the 1950s and let to a much larger number of low income families with an overcrowding and some evidence of blighted conditions on the Drive. There has been gradually over the years some shifting in that and I would say that Riverside Drive has been gradually upgrading because those conditions have been changing in and of themselves without external influence of public activities.

The owners of the properties have gradually determined that this area did have a potential for improvement, and they took steps to upgrade their properties, reconvert them back to apartments, and that change has reduced materially the number of single room occupancies that we had associated with overcrowding and deterioration and blight in the area.

Q As to that area, would it be fair to say that that area in general is improving?

A Yes.

Q And not in danger of tipping?

A That's correct. It has had racial changes. There are substantially more blacks in that area, but they are blacks whose income and social status is consistent with the rest of the middle class character of the area.

Q That raises an interesting question.

In your concept of tipping, an influx of blacks of the same economic range as the white is itself not a cause of tipping?

A Not necessarily. By no means.

THE COURT: Putting it another way, it would avert tipping, it would prevent it?

THE WITNESS: Certainly.

Q There is greater danger of tipping if the individual moving into the area is low income white rather than middle income black, is that correct?

THE COURT: That is an important question. Ponder on that and give us your reasons.

I consider it important. It may not be. At first blush I would say it is an important question.

(Question read.)

(Pause.)

A I would say so.

Q As to the low income white moving into an area, would there be greater danger of tipping if that household is one with 8 per sons in it as opposed to one with one or two persons in it?

A Yes.

Q In other words, the propensity for tipping decreases as to low income people moving in, to some extent, with the reduction of the size of that family, is that correct?

A Correct.

Q Also as to the size of family of low income, will there be less danger of tipping if the age of the family members increases? I will give you a hypothetical.

Assume a low income family of two people. One family, a husband and wife, aged 21 and 22; the other family aged 55 and 56. Which of those two families will cause a greater propensity for tipping, assuming both low income?

A I don't know if that is a sufficient condition, but if there is a margin between them I would say the older families are regarded as more stable and safer families in general.

THE COURT: And therefore less inclined to render a condition that will eventuate in tipping?

THE WITNESS: Correct.

Q What I gather from your testimony, the tipping problem really comes in to sharp focus when the type of persons moving into a neighborhood are low income with more than two or three persons in their family and are also young?

A If I may elaborate,counsel--

Q Please.

A And also broken families, broken families where there is a mother and several children. That is associated not just with the fact of motherhood and several children, but the fact that those children are less likely to have the normal parental supervision that children have. This is a contribution to some of the difficulties in neighborhoods.

THE COURT: I would hate to interrupt you, but that has something that has been plaguing me all along.

These are factors that I have seen and lived with all my life. I have seen it in my own home and environment; I have seen it in the case of the Court being a Judge for 36 years.

I refuse to believe, until I am shown to the contrary, that the only factors are color, sex, and young and old. I think that you have just begun to touch upon a factor which is every bit as important as any of the

other statistics that usually enter into a draft or a graph or a proposition which is advanced heatedly without these emotional factors that have a great imprint and impression on the molding of the community.

Am I right so far?

THE WITNESS: Yes, sir.

THE COURT: For instance, I happen to know, and it is true, that there are lots of people who never had the benefit of training in good manners. Their parents had to work day and night to hold the family together and there was no opportunity whatever to concentrate on the fine words that people can use, the solftness, the lack of an antagonistic position, the sweet way of winning people over. That is totally absent. They are gruff, but the pressures on them to maintain the family, which is uppermost in their minds, makes all these other factors of tertiary importance.

Am I right there?

THE WITNESS: Yes.

THE COURT: Where you have people who have not had the benefit, such as my own family -- we were moving every month, we couldn't pay the rent, and we were frightened to death as children that if the landlord caught up to us he would cut off our fingers, all of which was distorted

but the kind of thing that did create hatred, fear, apprehension.

Is there something in that?

THE WITNESS: Yes, sir.

THE COURT: So that there are factors of this nature that do enter into the molding of a community and the destruction of a community, is it not so?

THE WITNESS: Yes, sir.

THE COURT: And where people who are inclined to be impeccable in their deportment and who revolt at the sight of something that is ugly, garbage strewn around, that may be enough to upset certain people beyond recall, is that not so?

THE WITNESS: Yes, it is.

THE COURT: Yet the throwing of garbage by garbage throwers may be done by them without the full significance of what their act really carries with it, is that not so?

THE WITNESS: Correct.

THE COURT: If they could be taught to recognize that this is a factor that antagonizes other people they might very well desist in doing that. What do you say to that?

THE WITNESS: I agree.

THE COURT: Nevertheless while they do inhabit a neighborhood and do have these distressing habits, they can offend portions of the community to such an extent that the community will actually tip because the people who are offended will want to flee from the site.

THE WITNESS: YOu have described it, Judge. You have defined it.

THE COURT: I am sorry to interrupt you.

MR. LAND: It was very good.

THE COURT: I have lived long enough and seen so much sadness and so much tragedy, that the failure to reckon with these social condition factors will defeat our whole purpose here.

With great humility I point out that even in our courts, and I hope I am not overdoing it, there is a new day, as I see it, because our higher courts are beginnin to interpret the social significance of factors presented to them which heretofore they regarded only from a logistic point of view.

That is enough from me.

Unless I hear violent objection to the Court's insistence that this is an overwhelming factor, it is mountainous, it is equal to any factor, and in most instances exceeds any of the normal factors that are

seized on by well-meaning people, if you disagree with that tell me so, otherwise I will go along thinking along the lines I have indicated by my statement.

MR. LAND: Your statement with regard to throwing of garbage?

THE COURT: This was one little example. You got the full significance, I hope, of my entire --

MR. LAND: That is the case.

THE COURT: Precisely. I am just saying I want those factors borne in mind and I wantyou to know until you tell me to the contrary I am giving what I have just gotten through expounding upon as mountainous and even exceeding any of the usual factors which are resorted to by people when they get on the stand and go only to logic for their declarations -- do you understand what I am trying to say?

T5am

MR. LAND: I believe so, your Honor.

THE COURT: If you only believe I will have to go further because I want you to see it. I want the witness to hear it and I want his testimony to bear that in mind.

You got the full significant, did you not, of what I called habits?

MR. LAND: Yes.

THE COURT: Propensities of certain groups of people.

MR. LAND: Yes

THE COURT: Those who have been denied an opportunity for better manners because there have been far more important issues to be resolved by the family.

MR. LAND: I understand that.

THE COURT: Up to now all you have been talking about are black, white, male, female, age, all these factors, when you come to tipping of a neighborhood.

I insisted, however, in butting in and in telling you what I regard as far more important than any of those factors, and I gave you reasons, and I seem to have gotten the approval of the witness. He seems to join in that those are important factors and I have said that I regard them even more important than

the regular factors that men like the doctor and others constantly throw at us.

MR. LAND: Yes.

THE COURT: I am so positive of this that I say that it is on a par with what I am about to say.

Show me love, affection, respect in a family, poor, wretched, and you will find no crime or criminal tendency. Show me a family with all the money in the world and every economic security and an absence of love and affection, and you will find a tendency just the opposite.

So these are factors which a judge must weigh, and all I am doing is saying to you, do not overlook what to me is extremely impressive, and until you get me to change my views, or any of you, that's what I am going to labor under. Unless you say something to me at any time between now and the close of the case, I take it you share my view on that score and I know you will not be surprised if it enters into my final findings of fact.

Very well. Sorry to take this time.

Now you might as well go because there are two or three minutes left, and we will see you at 2:00 o'clock.

THE WITNESS: Thank you, your Honor.

gwjw 3

(Witness te porarily excused)

THE COURT: Call your next witness.

MR. MORRIS: Mr. Owens.

M I L E S L. O W E N S, called as a witness by the plaintiffs, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MORRIS:

Q Mr. Owens, where do you live?

A I reside at 65 West 90th Street, New York City.

Q And what is the name of that building?

A It's called St. Martin's Towers.

Q St. Martin's?

A Towers.

Q When did you move into St. Martin's Towers?

A Three years ago April; April, 1971.

Q Where did you live before that, Mr. Owens?

A 301 West 57th Street, and before that 80th and Riverside Drive.

Q Are you a tenant or an owner in the building?

A I am an owner-tenant in the building.

Q Is that a cooperative?

A Yes, it is..

Q And you own the apartment that you live in?

A Yes, I do.

Q Mr. Owens, would you describe the conditions -- in connection with your living in St. Martin's Towers, have you had occasion tc observe the West Side Urban Renewal area during the period of three-odd years that you have lived there?

A Yes, I have.

Q Are you familiar with the boundaries of the area, the general area?

A Yes, I am.

Q And when I speak of the area, I speak of the area between 87th and 97th Streets, between Central Park West and Amsterdam Avenue.

A Yes, I am.

Q You are familiar with that?

A Yes.

Q Would you describe to the Court the situation with respect to that that area as you have observed it at the present time and during the period that you have lived in St. Martin's Tower?

A Since moving in the building --

THE COURT: Would you go into detail, Mr.

Owens, so I can understand? Give me facts.

By the way, what is your work?

THE WITNESS: I am an engineer.

THE COURT: Then you do deal with facts, don't you?

THE WITNESS: Yes, your Honor.

THE COURT: In that sense I want you to give me facts.

A Since my wife - - I have a wife and two children. We like the city. We were looking for an area where we could raise children. We had a two-bedroom apartment but it was too small. So looking around over a period of five to six years, we found an area. We spoke to people in the city. We sent for the brochure of all the buildings that were available and what is going to happen to the city. We saw a master plan.

Q Is that of the West Side Urban Renewal area?

A West Side Urban Renewal. From our income and how we wanted to raise a family, we picked a little further uptown to move. We picked this area. We applied for the apartments in several buildings. We missed out. We got into St. Martin's. We moved in.

When we moved in and between now and three years back, the neighborhood is going down the drain,

down the drain.

THE COURT: Now I want facts. That's a conclusion.

THE WITNESS: There is a Site 30 from a master plan put out by the City of New York that said on this side would go a middle income building. There were other sites in the area that were supposed to be a cooperative apartment and a middle income apartment building. They have since gone down the drain. Site 30 --

THE COURT: How?

THE WITNESS: I will get to that, your Honor.

Site 30, from what the City wants to do, they have reneged on my family. The City showed us and promised that this site would be a middle income building. Now they want to turn it into a low income.

They put low income people in several other buildings in the neighborhood.

I want to raise my kid in a neighborhood with other kids. I think there are too many and they are bringing in more low income families to the neighborhood.

My kids go to public school. The school is going down the drain because if you promise us, the City, however is representing the City, that this will be an

integrated neighborhood, you are reneging. There is crime in the streets. They strip cars. Women can't walk sometimes. The garbage thing to me is small because you are going to find garbage in good neighborhoods and poor neighborhoods. But your statement before about the family, about when there is no love breeds crime and contempt, I agree with that.

I don't know how to put this, your Honor. My kids would not go in the street and open a fire hydrant and say "To hell with everybody else."

I hope my kids, from how I have brought them up, think about other people's property and other people's rights, which poor families, I must admit, some of them, do not.

I live in the neighborhood, I play ball in the neighborhood with the kids. I am not poor. I am middle income, I think. I go to the bar and drink with these kids, with the adults. They know me in the neighborhood. I am not a liberal like some of my neighbors who are beating a drum and they send their kids to private schools. Their kids don't play in the neighborhood. Their kids don't play in St. Gregory's where I play. They don't go to the bars. But there is a limit.

The educational level of P.S. 84 is going down the drain because they are not bringing in middle income families. They are bringing in poor families. You can't send a kid to Joan of Arc because there is not a mix there, there is only one. If you have a forest which has all types of animals and all different environments, the forest will survive. You cannot take a forest and put only beavers in there because they are going to destroy. The City is reneging on my neighborhood.

Accident on the corner of 91st and Columbus two months ago. A car went out of control. Three people critically hurt. They rushed them to the hospital. When the ambulance left, they started to strip the car. That's poor. My kids wouldn't be down there.

You want a good neighborhood, you want to show the world, whoever is representing the City back there, go with the plan you promised. Bring in more middle income families. You are chasing us out of the city. We don't want to live in filth with crime, with the guy standing around because they are poor and you are bringing them in from all over the city. You are dumping them on the upper west side. Grown men standing on the street. They should be out working. They don't

want to work. The City is taking care of them.

We had two big fires in the neighborhood. You don't have fires like this with a better class of people, in better neighborhoods, because the people know better.

I come home last night, a kid is smoking pot on my stoop. My kid ain't out there. Do you gentlemen have kids? They were home. I am quite sure if you gentlemen have kids they know better, that you don't do these things, you don't break windows, you don't bother people on the street, you don't drink beer, you don't make excessive noise at night with the bongos and the bugles and the parties. You don't sleep in abandoned buildings. You don't sell dope and pot on the street.

We had three murders a couple of years ago maybe 50 feet from me. You don't live in abandoned buildings. You think about other people's rights and other people's freedoms. You find this in a poor neighborhood and you are turning that upper west side into a dumping ground that will be a ghetto in ten or fifteen years because the responsible people are moving out. We are going to pack up and run and you will have a ghetto there. If you mix the neighborhood you

planned and show the world that other people can live together , there is a lot of white people that have lived in white neighborhoods all their lives in the upper west side. They came into the upper west side because they wanted to mingle with people. Now the City wants to chase them out. I belong to CONTINUE and I don't live on 88th Street.

I would like for you to come up there, your Honor, in our neighborhood. You are sitting in a court eight hours a day. Come up there. Walk around. Go to the precinct and find out what happens in our neighborhood. Then compare our neighborhood with other neighborhoods in the city. You want to take a low income building, put it on Park Avenue, spread the poor out all over the city. Don't keep dumping the poor in the upper west side because I'm going to pick my family up and I'm going to run. I want my kids to be raised with other kids. I want my kids to know other kids. I don't believe in all one. I'ts not the way God made the world. But the City is reneging.

I could go on and on but I am just repetitious. I don't have notes, but this is what you are doing. This is what the City is doing. You are chasing out the middle income.

THE COURT: All right. We have given the witness full opportunity to state under oath what he has to offer, and I doubt very much whether Mr. Morris has any other questions of the witness.

MR. MORRIS: I have no more.

THE COURT: He has undoubtedly covered everything you intended.

Gentlemen, would you like to undertake cross-examination of the witness? Mr. Land?

MR. LAND: We move to strike his testimony on the ground it is more in the nature of a political speech as to expectations of his concept of what neighborhoods should be rather than his physical observations, what he sees.

THE WITNESS: Can I?

THE COURT: No, it's not for you. It is addressed to me.

I am going to deny your application first because it is tardy, secondly, because as to form you may be right but the Court looks to substance. We worship substance above form. The substance of the witness' remarks are intact. I will disregard the surplusage, the repetition, the generalities that are not specific enough for us to weigh, but as a body of

testimony it remains. That counsel describes it as a political speech, he has a right to so regard it. I say frankly that I do not so regard it. I think this was an outpouring of feeling and I think it was sincerely uttered and I do not think it was what we commonly call a political speech. The witness actually took down his back hair, so to speak, and he stood naked before us. That's this Judge's estimate of the kind of spirit that he brought to his remarks. It was not artificial, it was not what we usually associate with a political speech.

As to whether I agree with him, whether I come to the same conclusion, that is another matter entirely.

All right, Mr. Land.

CROSS EXAMINATION

XXX

BY MR. LAND:

Q Mr. Owens, during your testimony you were speaking about people representing the City and you were looking at me. Do you think I represent the City here?

A Somebody represents the City.

THE COURT: I think you had better remain unidentified.

Q I will put it to you this way: I don't represent the City but one of the other two gentlemen does.

A One of three.

THE COURT: I let you have your chance. From now on answer just the specific questions put to you.

THE WITNESS: Yes, your Honor.

Q I will tell you who I am. I am one of the Assistant United States Attorneys here. I represent the federal government. I represent the Department of Housing and Urban Development which has committed funds to construct Site 30. Now you know who I am.

Mr. Owens, you testified as to promises you received from the City. Tell us exactly what those promises were?

A I saw a master plan. I do not have the plan as evidence. I don't know whether it has been introduced as evidence. But I saw a plan --

Q A map?

A A map -- that X site is going to be this building, X site is going to be this building, X site is going to be this building, and so on. It is going to be so much this and so much that.

THE COURT: That is what he is asking. When you say "so much" that doesn't relay anything.

As an engineer you must recognize --

A Site 30 in question was supposed to be a cooperative building, I think Mitchell-Lama. I may be wrong in that. Now the City, or whoever has reneged on the promise --

THE COURT: I am sorry to interrupt you. I said you had your chance to be general. Now you have to be specific. You were asked a simple question, what promises were you given. Then you should say, "I think I was promised such andsuch, that there would be such and such, that the neighborhood would be such and such."

I don't want to tell you what to say, but that is what he is calling for.

A I saw a plan that said that the community would be an economical, racially integrated community, that Site 30 in particular would be a middle income building only.

THE COURT: Go on with your answer. What else were you promised or what else was represented?

THE WITNESS: That other buildings would be middle income buildings which they reneged on and put low income families.

THE COURT: I understand that. He asked you what else were you told.

THE WITNESS: That's all.

THE COURT: What else did you rely on?

THE WITNESS I relied on the form I got from the City of New York of the housing.

Q These promises, they weren't someone saying something to you, something you saw in writing?

A It was in writing.

Q The map was in writing.

A The map was in writing. There is a City of New York folder about this big that used to list all the houses, who the sponsor was, how much per room it would cost.

THE COURT: Could you show him that exhibit if it's already in?

MR. GOLD: YOur Honor, I am familiar with the document. It's not in evidence.

THE COURT: Thank you.

Q When did you see this map and this brochure?

THE COURT: When? That calls for a date and that's it.

A I could not give you a specific date.

THE COURT: Approximately?

THE WITNESS: I would say maybe six -- maybe five, six or seven years ago.

THE COURT: All right, there it is.

Q That is between 1966, '7 or '8?

A I think so.

Q Do you know when the Urban Renewal plan for the west side was first adopted?

A I do not know.

Q Do you know whether prior to 1966 there were ever any changes from the original Urban Renewal plan that was adopted?

A I do not know.

Q Other than Site 30, what other sites do you claim there has been a reneging by the City of New York?

THE WITNESS: May I go to the map, your Honor?

THE COURT: No, you can't use that thing. That was just used for another purpose.

Have you got something he can use, Mr. Land?

MR. LAND: Yes.

THE COURT: Showing the witness --

Q This is a copy of a map which is 14-A in evidence, notwithstanding there is another xerox here.

A Where is Central Park West? What street is this? This is Amsterdam Avenue, that's Columbus, that is Central Park West.

Q Right.

A Let's orientate ourselves. This is 90th Street. There is a building right here. This is Trinity, right?

Q 24 is Trinity, right.

A These two buildings?

Q North of Trinity.

A Particularly the building marked 21 was supposed to be, to the best of my knowledge, a middle income building. The City of New York put welfare recipients and poor people in the building. The building is going down the drain as per conversations with people in the building, because I am active in the neighborhood. This building over here that faces it, which is marked -- whatever it is --

Q 20, 16?

A Yes.

Q 16?

A There was --

THE COURT: Marked 16?

THE WITNESS: Is this Turin House?

MR. GOLD: Location, please.

THE WITNESS: If Trinity is on 91st and 92nd, between 92nd and 93rd Street there is a building. What is the name of that building? I do not know from this.

Q Leader House.

A It had another name before that, right?

Q Yes.

A What was the name of it? I do not remember.

MR. GOLD: Liederkranz.

THE WITNESS: Right.

A This was supposed to be a middle income building. The City killed that and put in low income housing.

Going back to the building across the street from that, I can't give you incidents, but from putting poor people in this building they threw out a chair once and destroyed a guy's car. This is hearsay because I can't substantiate this. But there are stories in the building from people that I have spoken to that the people in the building, some of them have moved out already because the City promised them one thing and gave them something else. This is after they had moved in the building.

Q As to these buildings, it was your understanding

that they were to be middle income buildings with no low income tenants at all, is that right?

A To the best of my knowledge, yes.

Q Does your building have any low income people in it?

A When you say low income people, could you define that,please?

THE COURT: How have you been using it? You have been using it all along. What do you mean?

THE WITNESS: Low income people are people that are subsidized, on welfare, that the City is paying for their rent, their food and their clothing. In my building, we have what we call, I think, 18 -- I am not sure of the number of families, your Honor. I will say a round figure of 18 families that are capital grant families. In other words, the family as a unit is making X amount of dollars but wants a decent place to live but they can't afford it. So I think the state or the city or the federal subsidize part of their rent. If I was paying $300 for a three-bedroom apartment a month, they will be paying maybe $150 and I don't know which one of you three agencies makes up the $150.

Q Let me ask you this: As to the approximate 18 low income people in your building, was it your

understanding that that building would have about 18 low income people in it before you moved in?

A In my building?

Q Yes.

A Yes.

Q So you anticipated having 18 low income people, low income families?

A Yes.

Q Okay. Do any of these 18 low income families give you any problems of the type you just described?

A I can't answer yes or no to that.

Q Why?

A Because I do not know who the 18 families are in my building.

Q Do you have any problems at all in your building?

A I would say yes.

Q Tell me about them.

A There is roaches in my apartment.

Q In your apartment?

A Yes. From the compacting. There is mice in the new building on the 25th floor, there is people who leave the garage door open, we are having a running battle with our superintendent. These I think are

basic problems you will find in any building.

Q Low income or not?

A Low income. The door is left open.

Q Let me understand.

A Mr. Jones has a party one night. These are normal problems.

Q What does he do? What does Mr. Jones do?

A Mr. Jones has a party and the neighbors complain. Mr. J.nes has written a letter. Mr. Jones doesn't have any more noise.

Q Is Mr. Jones low income?

A I don't know. I am just using the name Mr. Jones.

Q Hypothetical?

A Hypothetical.

Q Let me ask you this: You are certain about what's happening in the area is not directed specifically to your building and the low income people who reside there, is it?

A No.

Q Let me ask you this: If each and every building in the Urban Renewal building was similiar to yours, all the high-rise buildings were similar to yours, would you have the same concern that you currently

have?

A You are saying that the buildings under construction and for the near future, if there is the same mix as the building I presently reside in would I be happy?

Q Yes.

A Yes.

THE WITNESS: May I amend that?

THE COURT: Yes, sir.

A (Continuing) There are 180-some apartments in my building. Out of that I think 18 are capital grant apartments.

Q Ten percent?

A Whatever that makes out to. If all the other buildings in the neighborhood coming up now were like my building, we have our internal problems, you are going to have that -- you are going to have that -- you have the same internal problems on Central Park South. These are individual problems that you are going to have. I would be happy for the neighborhood because my building is a mixed building racially, economically. It is a mixed building.

Q Okay. The mix economically is about ten percent low income, 90 percent middle income, is that

correct?

A Yes.

Q And that to you is the desirable mix for other buildings, is that correct?

A I can't say that. I wouldn't say that.

Q Were you told or did you read anything as to what the economic mix would be in high-rise apartment buildings to be constructed as part of the West Side Urban Renewal plan?

A Their figures, I do not understand it, it is a 70/30 mix. I have been hearing this term. I have been hearing this term for five years now.

THE COURT: What have you been understanding?

THE WITNESS: That it would be 70/30.

THE COURT: 70 percent of what? What does that mean?

THE WITNESS: 30 percent low income, 70 percent rich and middle income.

THE COURT: All right.

Q Is that ratio of 70 percent low income --let me withdraw that.

Is that ratio of 30 percent low income to 70 percent high and middle income unsatisfactory to your concept of what a neighborhood should be?

A I would say --

Q Yes or no?

A Yes.

Q Can you tell us why?

A Because in my opinion I think that -- I don't know the figures of the country -- I think that 30 percent of the country is poor in our area and 70 percent of the country is rich to middle income. That should be a reasonable mix.

THE COURT: That is what he asked you.

THE WITNESS: Yes.

THE COURT: For instance in your building, if it should become 30 percent low income and 70 percent middle income and those better off than the middle, would you find that acceptable? That is what he asked.

THE WITNESS: Yes.

THE COURT: And throughout the entire Urban Renewal area if that ratio was maintained overall in that area, would you find that acceptable?

THE WITNESS: Yes.

THE COURT: That is all he asked. Next question.

Q When you moved into the West Side Urban Renewal area, did you know that some of the buildings

already constructed were solely for low income persons?

A No, I did not.

Q You saw the map, did you not, before you moved in?

A Yes.

Q Did you look at some of the diagrams on the chart, what some of the buildings were?

A Yes.

Q Did you see any low income buildings?

A Not very many.

Q Did you see any low income buildings?

A Some were already constructed.

Q So you did know there were some low income buildings?

A Yes, there were some low income buildings there.

THE COURT: That is what he asked you.

THE WITNESS: Yes.

Q So you did know there were some low income buildings?

A Yes.

THE COURT: He answered yes. Next question.

Q In your conception of what a neighborhood should be, are you opposed generally to low income

buildings?

A If you group them all together and stick them in our neighborhood, yes.

THE COURT: That is firm. Next question.

Q If you stick them all -- assume that the map you just looked at shows that there were four low income buildings constructed and finished before 1966. Were those four low income buildings satisfactory or unsatisfactory to you in terms of location?

A If they were grouped together, they would be unsatisfactory to me.

MR. LAND: May I see the map?

Q Is it still up there?

A No, I think you took it back.

Q I did. It's right in front of me.

Mr. Owens, I show you what is Plaintiffs' Exhibit 14-A. I point out to you the low income buildings in existence in 1966 and let me show where they are.

The first is Site 38 on Amsterdam Avenue between 96th and 97th Streets. Do you see all those dots in it?

A Right. I know where that is.

Q The next is the Stephen Wise building

between Columbus and Amsterdam Avenue between 90th and 91st Streets.

A I know where that is.

Q The next is No. 15, Site No. 15, on 94th Street between Columbus and Amsterdam Avenue.

A I know where that is.

Q And the fourth one is Site 25 on Columbus Avenue between 91st and 92nd Streets.

A I know where that is.

Q In your conception of the location of low income buildings, looking at this map, how does that look to you, that mix?

A That's spread out.

Q No problem with that?

A No problem.

THE COURT: All right.

Q Let me ask you this: Assume that Site 36 of the West Side Urban Renewal area was prior to 1966 scheduled for a low income apartment building, fully low income, and assume that the plans for a low income apartment building on Site 36 were changed and instead there was constructed a cooperative building now known as the Turin House. All right?

Do you think, in your conception of what a

neighborhood should have, that if one site is changed from low to middle that there should be another site someplace else in the neighborhood to pick up the loss of low income units?

A I don't understand that question. Where is Site 36?

Q That is on Columbus Avenue between 89th and 90th Streets called the Turin House. Do you know that?

A It's 609 Columbus Avenue, is that the correct address? That's in front of my building.

Q South of your building.

A South of my building.

Q That's a cooperative.

Now, assume that that building was originally scheduled for a low income housing project and was subsequently changed then to be a middle income housing project.

In your conception of what the neighborhood should be, do you think that there should be some other location in the West Side Urban Renewal area to build a low income housing project to take up that which was lost by reason of the change on Site 36?

A I do not. I don't think Site 36 was originally planned.

Q But assume it was.

A I say no.

Q Even if it was, if it's lost, it's too bad?

THE COURT: You have to answer. Is your answer yes?

A My answer for that?

Q Yes.

A I can't answer that yes or no.

THE COURT: All right.

A I can't answer that yes or no.

THE COURT: How would you answer it?

THE WITNESS: I do not know. I would have to ponder it and think about it.

THE COURT: Next question.

Q Do you have any idea what the current ratio of low income persons is to middle and high income persons within the West Side Urban Renewal area right now?

A I do not know.

Q But to your judgment now there are too many low income persons, is that correct?

A I would say yes.

Q Mr. Owens, you talk about the concept of spreading out low income people, is that correct?

A That's what I said.

Q Build a low income housing project on Park Avenue. I presume you are speaking about 96th Street, though, is that correct?

A In the biggies, in the 60s, the 70s, or on Fifth Avenue or Madison Avenue or other parts of the city.

THE COURT: Mr. Owens, we all are entitled to dream of a better world and we should aspire to the higher levels, all of us, poor, rich, regardless of color, background, but now look, be practical. You know full well that the values in a neighborhood on Fifth Avenue and Park Avenue that you have mentioned are inaccessible to those who are beyond the middle income class. They cannot reach the pinnacle of luxurious income.

THE WITNESS: I buy that, your Honor, but if they can subsidize the middle income and they can subsidize the poor, then, as you said, I am living in a dream, you can't put a project in the 70s on Park Avenue, but if they wanted to do it they could have the money. Money is no object for people and lives and community. So I buy half of it, but no matter how much it costs, if it's good for the people in the city, they got the

money. They can put a man on the moon, they got the money. I don't buy the money bit. Forget about the money. We are talking about human beings. We are talking about spreading out, let other people know how other people live, how I want to raise my kids with other kids. I want them to know all types.

THE COURT: In other words, a true integration --

THE WITNESS: Everybody gets a little bit of it.

THE COURT: It would dictate this, that the city acquire, no matter what the cost, an area within the luxury area of the city, erect buildings which would enable poor tenants to live there --

THE WITNESS: In decent housing.

THE COURT: Have the advantage of neighbors of different economic strata and the latter, in turn, would have the benefit of seeing people who are indigent and trying to get their place in the sun and who may some day also be able to afford on their own a luxury apartment, is that what you are saying?

THE WITNESS: Yes.

THE COURT: All right.

Q Mr. Owens, I presume you would associate areas

of the city such as Bedford Stuyvesant, South Bronx and Harlem with those areas of the city which have a very heavy concentration of low income persons, would you not?

A Yes.

Q On your theory of spreading out, I presume the persons living in those areas should be relocated to other areas of the city so that every community has approximately its fair share of the total low income people residing in New York, is that correct?

A May I amend your question? If the families want to be relocated.

Q Assume they do.

A If they want to move to better housing, I say yes, better communities, better schooling.

Q Let me ask you this, Mr. Owens: Assume that low income people, percentage of low income people, currently residing in all of New York City is 32 percent and that in your particular community the percentage of low income people is only 30 percent. Would you the n favor an increase of low income people in your community to 32 percent so your community would have a fair share?

A No.

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Q Of necessity though, Mr. Owens, if you are not willing in your community to assume what is the low income for all of New York, are you not forcing some community to have an excess of what the norm is?

A I don't understand the question.

THE COURT: It is a good question. Listen to it.

(Question read.)

Q Do you understand the question?

A Break it down. I am not a big word person. You are saying if Block A has 32 per cent and Block B has 30 per cent, then they should be 31 and 31?

Q Yes.

THE COURT: As I got your question it is even broader than that.

If throughout the city there are 30 per cent of the total population who are poor people, and if further you insist that in your neighborhood there be less than that percentage of poor in relation to middle class, what is going to become and what do you do with the poor people in the city who have a right to decent housing? You don't want them and the next group doesn't want them. Where are you going to put them?

THE WITNESS: Bring our neighborhood up to average.

Is that --

THE COURT: Hold it.

And bring every neighborhood up to average.

THE WITNESS: Yes.

Q Assume right now, Mr. Owens, that your neighborhood has 30 per cent low income families and assume that the average for all of New York City is 33 per cent. Would you then favor bringing an additional 3 per cent low income families into your neighborhood?

A No.

Q Is that not in conflict with your earlier statement that every community should have the same number --

A You said "assume."

Q I asked you to assume it.

A I said no.

Q What you are telling me then is, no matter what percentage of low income people do reside in your area, you already think you have too many?

A I think for the conditions where I live right now it is too many. I have two kids in school --

THE COURT: You told us. I gave you a full chance to tell us about it.

Next question.

Q Mr. Owens, was it your belief that there would

not be too many low income people within the West Side Urban renewal area if the city followed its plans?

A If the city promised on paper it would be a good neighborhood.

Q You told us earlier you saw a plan and apparently that plan met with your satisfaction, is that correct?

A That's right.

Q Also assume if that plan was carried out, the one you referred to, there would not be too many low income people in your neighborhood, is that correct?

A That's correct.

Q Tell me exactly what the city has breached as to that plan which has caused too many low income people in your estimation in your neighborhood?

A You ask me what the city has --

Q What they have done wrong.

A The two buildings we looked at here were supposed to be middle income?

Q All middle income?

A They brought in welfare people in these buildings.

Site 30 which is supposed to be a middle income, they want to make that into a project.

Q It has not happened yet, right?

A Yes.

Q What has happened to make too many low income people right now?

A I can only saytwo buildings that I know of. I can also say about the squatters in the neighborhood. The city has done nothing about that.

If I may, your Honor, I have no evidence, but there was a memorandum from the city of New York that we got a hold of by accident. The memorandum said -- I can't give it word for word -- it said in plain language:

"Hey, we are the City of New York. To all the welfare boroughs in the city, send us all you got because we got buildings."

That is wrong.

We got a hold of this memo[illegible]ndum. I don't have it.

THE COURT: How long ago was this?

THE WITNESS: I would say about a year and a half to two years ago. This was the City of New York saying this.

THE COURT: Do you have it home?

THE WITNESS: I do not.

THE COURT: Where did you see it? Tell me more about it.

THE WITNESS: I can't go into detail.

THE COURT: Did you read it yourself?

THE WITNESS: I did not see it myself. This is hearsay from my wife and people from CONTINUE.

If I may --

MR. LAND: May we strike this, about the letter?

THE WITNESS: It is a memorandum. It is not a letter.

If I can get a copy of this --

THE COURT: How are you going to get this?

THE WITNESS: May I have five minutes?

THE COURT: Sure. I want to see it if it ever existed. I demand, Mr. Gold, or anybody else, I direct he make a search for any such thing as that.

I am going to strike what he has to say because that is not evidence. If there is such a thing in existence, the Court is entitled to see it.

MR. GOLD: In line with that direction, may I have some kind of date?

THE COURT: He says about a year or so ago there was a memorandum from the city --

THE WITNESS: I am not sure of the exact date.

THE COURT: You can't come on the stand and throw out something that alerts the Judge unless you can back it up. You either put up or, to use the vernacular,

"shut up." Talk to Mr. Morris.

MR. LAND: May we come back to this later, during the luncheon hour?

THE COURT: You can't get through between now and lunchtime.

Talk to Mr. Morris during the lunch period.

THE WITNESS: All right.

Q Your testimony as to the St. Martin's cooperative building, you believe there are approximately 10 per cent low income families there?

A Yes.

Q I was not clear whether or not you oppose any increase in the number of low income families in your particular building.

A I oppose it.

THE COURT: When you get something like that, you leave it alone. You keep coming back and by the time you get through, whatever you have gained you lose.

MR. LAND: I want to tie this in.

Q You testified now about the squatters, some squatters, moving into the West Side area, correct?

A Right.

Q Do the squatters, to your knowledge, cause a problem within the area?

A Yes, I do think they create a problem. They have created a problem.

Q Squatters are low income people, right, to your knowledge?

A To the best of my knowledge I would say yes.

Q You have 10 per cent in your building who are low income persons?

A Yes.

Q Which to your knowledge do not cause a problem?

A Yes.

Q So of necessity there must be something which distinguishes the type of low income persons in your building and those low income people who are squatters, is that correct?

A Yes.

Q Would you say that the major difference, the reason for the difference, is that in your building the low income people are living in apartments with heat, hot water, lighting, relative cleanliness, the attributes of decent living, whereas the squatters are living in hovels without decent water, no heat, broken windows, and everything else we associate with a hovel. Would that be one of the major differences between the two types of low income people?

A I must expound on my answer.

THE COURT: Yes, you may.

A The two things you have brought up, the people in my building are working families. Squatters, I would say, 99 per cent of them, do not work. They are living, they are not paying rent, they are not bringing in any money to support themselves.

There are poor people in this city who are living, who are poor. They are not living in the cold. They are not living in buildings you described. They want to better themselves.

Squatters is somebody, to me, who is going to go and doesn't want to put out, wants you to hand them out.

Squatters occupied my building before we occupied it. They were brought from all over the city in buses by the bleeding liberals who said, "There is a new building, go move in."

Where does anybody get a right to say, "Hey, I'm poor. I'm not going to help myself so you help me"?

If I was poor -- and I am from a poor family -- I would scrub floors, I would try to put something in the community. I would not let anybody -- I would not live in squalor, I would not live in broken windows, I would not squat, I would not live like they live.

Q They are living in buildings which in your estimation are deteriorated buildings, is that right?

A Right.

Q They are slum buildings?

A Right.

Q In some instances they have no window in the window frames?

A Right.

Q Floors are ripped up?

A Yes.

Q Sometimes no heat?

A Yes.

Q No lights sometimes?

A Yes.

Q Stairwells ripped out?

A Yes.

Q In other words, the worst type of housing conditions which we can sometimes imagine?

A Yes.

Q You associate that with these squatters?

A Yes.

Q In your particular building those conditions do not exist, do they?

A Right.

Q But you do have low income people in your building?

A Working low income people.

THE COURT: You made that point.

Q Is it your testimony that every one of the low income people in your building are working and not one is on welfare?

A I cannot answer yes or no because I don't know.

Q Mr. Owens, you are a reasonable man. You are an engineer. I presume you have had some education. Do you have a degree in education?

A No.

Q What kind of engineer are you?

A Staff engineer for the National Broadcasting Company.

Q You have some education, you have learned things?

A Yes.

Q You were able to perceive things?

A Yes.

Q Can you not, when you see these hovels in which the squatters live, associate some of the social problems which come from the squatters? Can you not in your mind say perhaps part of the reason those people act that way is because of the condition in which they live, the type of building in which they live? Is there any relationship

in your mind as to the type of building in which these people live and the social habits they exhibit?

A Yes. I say yes to that, but I also say, you could pick yourself up. You don't have to live that way in a squatters building. If you need help you go to the city. They put you in a hotel. Right? Am I right or wrong?

Q Assume that a building similar to St. Martin's Tower in which you live were constructed with the amenities of decent housing and in that building, put it any place in the city you want to, you put the people who are apparently the squatters in your neighborhood; do you think the social characteristics of those people would improve?

A I would say no. I would say you would waste money and destroy a building. That is my honest opinion because I agree with the Judge. If there is no love, there is no consideration for other people's things, and if you are living there free, you don't care. If you have to pay for it, if you had to paint the place, then you say, "Hey, I'm not going to scratch it up. I will teach my kids not to do these things. I won't send them out in the street to bother people. I am not going to have them taking bicycles and turning on water and making noise because we are considerate. I am going to raise my family

to be considerate of others and I am going to try to pull myself up and float."

Q You use the term "showing of love." Right now you would say the City of New York shows no love to these people in the squatter buildings because of the conditions in which those buildings are. You might say that, would you not?

THE COURT: Mr. Land, isn't that really argumentative? Haven't you gotten his position for what it is worth? I am not discouraging you. I think you are on the right track, but haven't you really developed that from him and isn't the rest of it argumentative?

MR. LAND: I will change, your Honor.

Q If the city would build a low income housing project some place in the city for the people who live in these squatter buildings in your area, would you not say that that is some demonstration of love by the city, assuming the city can give love?

A I would say no because the city is bound to do it by law.

THE COURT: My dear counsel, I want you to know since you are persistent about it, I might as well tell you what is coming into my head.

If the squatter conditions are the result of the

housing that you have described in your questions, the city is on notice -- and I should think that any civilized person would be revolted if the city allowed human beings to exist that way -- I don't care which way you are shifting or whose responsibility it is, your own questions indicate a most frightful inconsiderateness of human beings.

That is alarming, disquieting, and darn near horrifying.

MR. LAND: We have had in this trial considerable testimony as to squatter buildings on 88th Street in which some of these conditions I mentioned do exist. Apparently these buildings are owned by the City of New York.

Part of the problem with this trial, as I see it, is to correct those conditions in these squatter buildings either by improving those buildings or removing the people living in them to better buildings.

THE COURT: I am telling you what is going through the judicial noggin.

If the condition which the evidence demonstrates with regard to the squatters is known to the City, if their living conditions are such as your questions clearly demonstrate, then I tell you that that is a factor with which we must reckon, and that certainly is crushing evidence against the City, if it is true, because that kind

of thing is infectious and reinfects notonly those living but all over.

It is like releasing a typhoid matter into the community only to be reinfected and to infect others.

Be very careful with that. You injected it. It is here. I can't close my ears to what I heard.

I leave for lunch on a disquieting note and I hope it will be made clear to me before the day is over. Right now I am upset.

We continue at a quarter after 2:00.

Just a moment! Remain in your seat until I get up. You talk about respect and order, practice it on all occasions.

THE WITNESS: Yes, sir.

THE COURT: Announce a recess.

(Luncheon recess.)

AFTERNOON SESSION

2:15 P.M.

MILES L. OWENS, resumed.

MR. LAND: Your Honor, I have no further questions.

THE COURT: Mr. Gold, does something occur to you?

MR. GOLD: Yes, sir.

CROSS EXAMINATION

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BY MR. GOLD:

Q Mr. Owens, I have the impression from your testimony this morning that you equate low income people with people on welfare. Is that a correct statement?

A Yes.

Q And those are the people, then, which you would least or whom you would least like to see in the West Side Urban Renewal area, is that correct?

A No, that's not correct.

Q Then there are some welfare people or welfare families with whom you could live side by side, is that correct?

A Yes, I do live with welfare families that

have -- yes.

Q For example, there are elderly people on welfare. Those families don't particularly bother you, do they?

A Give me an example. Some do and some don't.

Q A husband and wife over 65 on welfare, would you say that that would be a problem for the west side neighborhood?

A No.

Q Disabled or blind person on welfare, would you say that would be a problem for the west side neighborhood?

A I don't understand your question.

Q Is that a problem for you, a disabled or blind person who is receiving welfare assistance from the City of New York? Do you feel that those are the type of people that should be included in the West Side Urban Renewal area?

A If they were originally living, if they are relocatees from the neighborhood.

Q I see. When you moved in, then, sir, in 1971, were you aware of the fact that many people were displaced from the Urban Renewal area as a result of the demolition?

A Are you talking about the building I moved into?

Q No, generally.

A They were displaced and relocated many of them in the neighborhood.

Q Correct. And those people who were displaced have certain rights to return, is that correct?

A They have the first right to return.

Q Regardless of whether they were low income, middle income, on welfare or otherwise, is that correct?

A That's correct.

Q And you would grant them that right, would you not?

A It is not my right to grant. It is their right for being there first, living there first. I have nothing to do with granting rights to them.

Q I see. But you would then say that they were entitled to come back to the area and live in your building or in adjacent buildings, is that correct?

A That's right.

Q There are also people who receive welfare assistance who are working people, is that correct?

A Yes.

Q And would you consider those people low income

people?

A Yes.

Q There are also people who do not receive any assistance by way of welfare who work, earn a salary but perhaps a small salary.

Do you consider those people low income people?

A It's the same group that you just finished.

Q No, it's not, not necessarily. No assistance, they work, they don't have your skills perhaps, or my skills, and they do not earn as much money as you or I do.

Are those low income people?

A Of course they are low income people.

Q And those people who earn a living and do not receive any welfare assistance and live in the West Side Urban Renewal area as low income people, are those people objectionable to you?

A Say that again.

Q These people who earn a living, go to work every day, do not earn as much as you or I but do not receive welfare assistance, which you consider low income people, let's say they make $7,000 a year, are those people objectionable to you as living in the west

side?

A Yes and no. Do you want me to give the reasons?

Q Yes.

A They are objectionable to me if they have no respect for my rights or anybody else's right, if they have no respect for property, if they don't care about their family, about rearing their children, if there is no love in the family, if they are just working and letting the family go to pot; I am objectionable to that group and that group of people.

Q But that's true, is it not, Mr. Owens, about people and families throughout the City of New York, is it not; there are some people and families who give a damn about their children and their family and some don't, isn't that correct?

A That's correct.

Q And that is not necessarily -- that particular value does not necessarily relate to whether they are on welfare, partially on welfare, earn $5,000, $7,000 or $25,000, does it?

A You are saying that there are families that are making $25,000 that don't give a care about the family themselves, the husband and wife?

Q That's correct, is it not?

A I imagine so.

Q What you are really concerned with, then -- let me see if I state it correctly -- is that the people who live in your neighborhood care for that neighborhood?

A Some of them.

Q You want people who care for the west side?

A I do.

Q No matter how much money they earn, isn't that correct?

A Yes.

Q So that if in St. Martin's it was possible to have 50 percent of the people who were low income so long as they cared for St. Martin's and for the neighborhood, that would not be objectionable to you, isn't that correct?

A In my building -- you said St. Martin's, you are not saying 50 percent of the neighborhood, you are just using one building?

Q At the moment, yes.

A If they took care of the building and raised their families where their kids are not running in the street, are not breaking windows, are not stealing, there is love there between mother and father and family,

they are not marking up the building with graffiti, they are not emptying garbage in the halls, they are going to school to get an education, I would be very happy. But we are living in a dream. You have set up a dream.

Q I am just asking you if you would be happy.

A I would be happy.

Q Fine. It's not necessarily so, then, that there is a direct relationship between the people who don't give a damn and the fact that they are making a small amount of money or none at all, is that correct?

A Yes, that's correct.

Q In your particular building, St. Martin's, has about ten percent of its units on a capital grant program, correct?

A I think so.

Q About 20 apartments out of 180?

A I do not know the exact figure.

Q I think you said 18. That is close enough.

Do you have any idea why St. Martin's in particular has ten percent and other buildings have twenty or thirty percent low income tenancy?

A I don't know. I can't answer that. I did not make out the plan. I don't know who derived the

figure.

THE COURT: Wait a minute. We have to move forward. The answer is I do not know.

Q Did you ever inquire of any City official as to how come St. Martin's has ten percent and some-place else they have 30 percent?

A No.

THE COURT: Next question.

Q With reference to the schools, Mr. Owens, you indicated that the education in the schools in the West Side Urban Renewal area was bad. I am not using your exact words but something similar to that. Correct?

A Yes.

Q You have two children?

A Yes.

Q And they are both in the public school system?

A Yes.

Q Where do they go to school?

A P.S. 84.

Q P.S. 84. Is that commonly referred to as the Sol Bloom School?

A That is the Sol Bloom School.

Q And on what do you base your statement that the education at P.S. 84 is bad?

A The recently publicized reading scores. All right?

Q Okay.

A Also I am active in the school. I spend time there. I am a volunteer. I see what goes on. I am not concerned about my kids class. I walk around the school. I walk in the schoolyard. I see. I see kids that are poor. Every second word is a cuss word. My kids don't cuss because they know better. You asked me. Let me finish.

Q Go ahead.

THE COURT: Go ahead. He is not stopping you.

A Joan of Arc is a high school.

Q I am talking about the school your children go to.

A The school I see, I see people picking the garbage in the afternoon, the garbage in the afternoons that they put out from the cafeteria. I see kids coming to school with no clothes in the wintertime.

Q Those are poor people, is that correct?

A Right. I see kids that mark up the school. I am on the bathroom committee. You should see the bathrooms in the school.

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THE COURT: I am supposed to get the facts. When you say you should see the bathrooms in the school —

THE WITNESS: I have seen them.

THE COURT: Tell me what you saw. Those are facts.

THE WITNESS: I saw bathrooms that kids use, they don't flush them. Toilet paper, hunks of toilet paper, wet them, and they throw them at the ceiling.

They don't use the urinals. This is from their home. They are not taught any respect for other people's property. For even their own. There is graffiti all over the toilet. There is broken toilets.

Q Have you visited any other public schools in the City of New York?

A PS-9, Joan of Arc.

Q And the same things exist?

A PS-166.

Q The same thing occurs --

A I am concerned about any neighborhood. I have been in schools in my neighborhood.

Q YOu found the same conditions in all those schools?

A Yes. I have visited PS6, which is on the East Side, 81. Immaculate. There is a different breed

of kids going to school there.

Q What you are saying is that the low income youngsters in the West Side are a cause of some lack in the educational process there, is that correct?

A Yes.

Q And the reading scores in 84 are low?

A That's right.

Q Are you familiar with the reading scores throughout the City of New York?

A No, I am not.

Q Do you know if the City of New York in general, the schools, are below the norm in reading?

A I do not know.

Q But your school where your children go is?

A Yes.

Q With reference to Site 30, which is across the street from St. Martin's, do you know how many units were proposed for that site?

A I do not know.

Q Are you aware of the fact that in the original designation, before the public housing, which you spoke of earlier today, that 30 per cent of those units would be for low income people? Were you aware of that?

A I was aware of that.

Q And in fact the concept of the Urban Renewal area is that somewhere between zero and 30 per cent of every Mitchell-Lama building would be low income units?

A Low income units for relocatees of that site, people from the site.

Q You mean from the very site on which the building is being built?

A Yes. They have first preference.

Q Not from the entire West Side area?

A No. From that site and that neighborhood, I would say.

Q The 20-square blocks?

A I think so.

Q Then you say when we run off those people, no more low income people.

A Yes.

Q Do you know if all of the relocatees who lived on the site and had the right to return, so to speak, have been given new housing in the area?

A I cannot document this. I can only answer yes and no, because some people from Site 30 are still living in the neighborhood. Half of Site 30 was squatters.

Q Maybe you misunderstood me. Do you know of your

Now look

own knowledge --

A I do not know of my own knowledge if the people that were living on Site 30 are still residing in the neighborhood.

Q Do you know of your own knowledge whether people who are living in the 20-square block area at the time the city took title to that area, which was somewhere in 1963, have all been rehoused, those who wanted to be rehoused?

A I can answer that with yes and no, because when I moved in and got involved in the neighborhood I wanted to know who lived in the neighborhood. The only person I could figure that would give me the information would be the mailman, so I asked the mailman who had been in our neighborhood for 20 years, who lived in this building before it was a biggie, when it was tenements.

Q You mean St. Martin's?

A Yes.

And who lived across the street, and the mailman with his experience told me, "Mr. A. is living down the street, Mrs. So and So used to have the stores up in that building, Mr. So and So went here," and he went down the full block.

"Some people," he said, "moved out and other people came back."

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Q You don't know then if all the people ---

A I do not know if all the people returned.

Q So it is possible that there may be some who have not yet returned or been housed in new houses?

A That's right.

Q Those people as far as you are concerned have an absolute right to come back?

A Definitely. They were there first.

Q That is regardless of whether they are welfare or any other capacity?

A Right.

Q You talked about the map of the area that you looked at with the various site designations. Where did you get that map?

A From the City of New York.

Q When you say "The City of New York," on person in particular?

A No persons in particular. Whoever responded to the letter or postcard that we originally sent.

Q They sent you that map --

A They sent a map and they sent a booklet which is a copy, something like that on that desk right there (indicating), but much thicker and it covered all of the boroughs.

Q All the HDA development in the City of New York, correct?

A It covered the five boroughs, every building that was going up, whether it was public or private, sponsored or non-sponsored.

Q Did you ever inquire of any city official as to the middle income to low income mix in a given apartment building?

A No, I did not.

Q Did you ever inquire of any city official as to the middle to low income mix in the entire Urban Renewal area?

A No, I did not.

Q Were you ever told in any way by any city official the number of low income units that were to be in the area when it was completed?

A No. I have attended several meetings in the neighborhood. I can't give names of people who spoke pro and con for this, but --

Q No city official ever told you that?

A No.

Q Did you some time in the latter part of 1971 have occasion to attend the Board of Estimate hearing with respect to the designation of Site 30 as public housing?

A I went to, I imagine, two meetings at ~~Brandeis~~ High School.

Q Yes or no? Did you attend the Board of Estimate meeting in connection with Site 30 designation?

A No.

Q You movedinto the area in April of 1971, is that correct?

A That's correct.

MR. GOLD: I have nothing further.

THE COURT: Mr. Douw.

MR. DOUW: No questions.

THE COURT: Mr. Owens, your testimony is completed. You may leave.

THE WITNESS: Thank you, your Honor.

THE COURT: Won't you please continue with Dr. Kristof.

(Witness excused.)

MR. MORRIS: Your Honor, before we go to Dr. Kristof, I would like to recall Mr. Karlan for just two questions. He had already testified.

THE COURT: If it is only going to be a matter of a few minutes, we will accommodate him.

I would like to get the continuity of the testimony of Dr. Kristof.

Go ahead and call him.

R O L A N D N. K A R L A N recalled as a witness, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. MORRIS:

Q Mr. Karlan, did you testify previously in this trial?

A Yes, I did.

Q Is your testimony contained at Pages 71 to --

THE COURT: Don't ask him. You tell me.

MR. MORRIS: May the record show that his testimony appears at Pages 71 to 132.

Q Turning to Page 119 of your testimony, I will read you several questions and answers.

"Q You are sure he was not a member of CONTINUE?

"A No, he was not.

"Q How do you know that?

"A I know many of the members of CONTINUE, but I know what organization he belonged to. I had seen him many times."

THE COURT: Wait a minute. In order to get the fact finder to know what you are talking about, you have to tell me who "he" refers to. Who was he talking

about?

MR. MORRIS: There is a correction of one word he wants to make.

THE COURT: Mr. Morris, just answer my question. Who was he talking about when he said "he" in that testimony you have read? It will come back to me. Then I will understand it.

MR. MORRIS: A Mr. Prior, a member of CONTINUE.

THE COURT: Now it makes sense to me.

MR. MORRIS: (reading)

"Q Was he white or black?

"A He was a Spaniard.

"Q Do you consider hispanic people white or black or hispanic?

"A Black."

Is that the answer you gave?

MR. LAND: I object. I think the record will reflect that was his answer.

THE COURT: It was his answer according to my memory.

THE WITNESS: Excuse me.

THE COURT: Don't argue with me. I am not going to take out -- I will speak the way it comes across the plate. I don't care who is here. I have been doing it

all my life and no one will stop me as I enter my last chapter.

My memory is that you did say it. How do I remember it out of one million words? Because it struck me. That's all. You may not have intended it. That is another matter. That is the way it came out of your mouth.

If you wish to ask him the question over again and he wishes to make another answer, that is different. But if you are asking me, as the fact finder here -- I say what that says is exactly right. That is what he happened to have said.

Q Mr. Karlan, do you wish to change your answer assuming that was your answer?

A Yes.

Q What do you wish to have your answer read?

A It is both.

THE COURT: Give me the answer. Not a logistic answer.

THE WITNESS: Sir, my sister lived in Puerto Rico for 15 years --

THE COURT: Did I ask you that? Do youwant to quarrel with the Judge?

THE WITNESS: No. Puerto Ricans are Latins of mixed origin.

THE COURT: So what do you want to say is the answer?

THE WITNESS: They are neither black nor white.

THE COURT: That is his answer. Is that what you called him for?

MR. LAND: That was not the question I asked at the time.

The question was, do you consider hispanic people white or black or hispanic?

I was not using the word Puerto Rican, but hispanic for a definite purpose.

THE COURT: Wait until you get your chance. There are brilliant streaks in you that are deserving of applause and then you go into a nosedive.

He had a good point there, but he threw it away. He should wait.

BY MR. MORRIS:

Q Mr. Karlan, when you executed the contract of sale of your property which is in evidence in this case, were you shown at that time a copy of a final plan for the rehabilitation demonstration of the pilot project?

A Yes, I was.

Q Is your property included in that pilot project area?

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A Yes.

MR. MORRIS: I offer this in evidence.

THE COURT: Any objection to it, gentlemen?

MR. MORRIS: As a matter of fact it is already in evidence in the Trinity contract.

MR. GOLD: No objection.

THE COURT: You say it is in the contract already --

MR. MORRIS: It is in theTrinity contract.

THE COURT: Then all you need to say is "This is the same as a part of theTrinity contract already in evidence and it is headed such and such." That identifies it.

You won't belabor the record.

MR. MORRIS: May the record show that this is designated as final plan Urban Renewal plan for the rehabilitation demonstration pilot project in the West Side Urban Renewal area project New York D5.

THE COURT: Anything else?

MR. MORRIS: Yes.

Q I call your attention, Mr. Karlan --

MR. LAND: Excuse me. What was the question about this document?

(Question read.)

you possibly give me some indication of what your

Q I show you Paragraph R on Page 16 of that same document and ask you if you are familiar with that paragraph.

(Pause.)

A Yes.

Q Does that paragraph call for a written consent on your part to any change in the plan?

MR. LAND: Objection. Whatever the paragraph says is what it says.

THE COURT: Tell it to me. Tell me what that paragraph shows.

MR. MORRIS: I will read the paragraph.

"Changes in approved plan. This final plan may be modified at any time by the City of New York provided that if any such modification affects any real property previously disposed of by the City in the pilot project area written consent to such modification must be obtained from the purchaser or lessee of such real property."

THE COURT: What is your question?

MR. LAND: I think there is another sentence to make it complete.

MR. MORRIS: There is not another sentence.

THE COURT: Either adhere or take it back, Mr. Land.

white, Blacks, Puerto Ricans. That's all.

(Pause.)

MR. LAND: My recollection of what is part of the Trinity contract, it contains additional language.

THE COURT: You don't have to apologize or feel pained. You have a perfect right to call our attention to anything that occurs to you. It is done honestly and forthrightly.

Get a hold of the Trinity contract.

MR. MORRIS: I have it right here. Same clause. It is on Page 17 of the pilot project area.

(Pause.)

MR. LAND: I now know whereof I have this concern. Maybe I should explain it to the Court.

THE COURT: You don't need to as long as you withdraw any objection you had to what he confronted the witness with.

MR. LAND: The particular language just read is contained in toto in part of Trinity's contract, but there is other language of the same flavor which has additional language.

THE COURT: Which you could confront him with if you think it is necessary.

BY MR. MORRIS:

Q Did you give the consent called for in the

A No, I am not.

paragraph I just read to a change in the plan in connection with Site 30 and Site 4?

A No.

Q You did not?

A No.

MR. MORRIS: That is all.

THE COURT: Now you may ask any questions, Mr. Land.

MR. LAND: We would like to put into evidence, your Honor, the particular document Mr. Karlan referred to.

THE COURT: All right.

xxx (Defendants' Exhibit Z was received in evidence.)

THE COURT: "Z" in evidence is the document that Mr. Morris confronted this witness, Mr. Karlan, with.

MR. LAND: Let the record show this document is dated February 9, 1960.

CROSS-EXAMINATION

BY MR. LAND:

Q This is a document that was shown to you one day in 1960?

A Yes.

Q When did you purchase your brownstone?

A 1968 was the actual closing.

little lower.

Q You speak about a pilot project. What is the boundary of the pilot project?

A 94th and 95th Streets.

Q Between what?

A Central Park West to Amsterdam Avenue.

Q 94th and 95th between Central Park and Columbus. Two blocks of the whole Urban Renewal area, is that correct?

A Four blocks.

Q What were the streets?

A 94th and 95th from Central Park West to Amsterdam Avenue.

Q There are predominantly brownstone houses on the blocks?

A On the streets, yes.

Q The pilot project does not include Site 20 then, does it?

A No, it would not.

Q In this Paragraph R, the words "final plan" are used. How do you interpret the phrase "final plan"? What is that?

A I interpreted that as housing 2500 low income families in five public housing buildings, plus all of the Mitchell-Lama buildings that went up with ratios from --

Q This final plan is something different than

study prepared by Hart, Kravitsky and Stubee and it was

the Urban Renewal plan, is that right?

A Then the Urban Renewal plan? The plan was changed a number of times. They kept increasing the amount of low income families.

Q Did you give your consent each time there was a change in the plan?

A The last change was made before I signed, before I owned the house.

Excuse me, if you are referring to Site 30 that was later on.

Q The phrase "final plan" as used in Section R of Exhibit Z, does that refer to the final Urban Renewal plan in existence at the time this document, Defendants' Exhibit Z, was executed on December 19, 1960?

A I would not think so. I don't know.

Q You don't know what it refers to?

A I would imagine there was a final plan I always heard referred to as 1965 or 1966. That is what I know of the final plan.

Q This language says this final plan can be modified, they are referring to something that was not yet in existence the date the Government --

THE COURT: Why do we spend time with that? I want to know why that is not an argument to the Court.

Say "Judge, look what he said. Now look how wrong he is."

See how valueless this is.

Let's not waste time.

What else do you want of him?

MR. LAND: Your Honor, the final plan referred to in Defendants' Exhibit Z is in fact the final plan dated February 19, 1960, which is Exhibit D to Trinity's contract which is already in evidence, so that we want to demonstrate that Mr. Karlan shows considerable confusion as to what he is talking about.

He says he read this and understands it.

Apparently he does not. He made representations about his reading this and understanding it.

THE COURT: All he said was that he read it and he did not get the notice that is provided for on that particular paragraph which was read.

That is all I have before me. Why make a whole to-do of it? What does it amount to? How much are we going to gain by it? What is there at stake here?

Go ahead.

End 2PM

3pm

THE COURT: I think, if I may suggest, that is a matter of argument for the Court and that's it. Ask him a couple more questions dealing with it, if that will make you more content, and let's be through with it.

MR. LAND: Let me ask Mr. Morris a question.

THE COURT: Surely.

MR. LAND: What does Mr. Morris contend for the purpose of this lawsuit the relevance of Subsection R of Government's Exhibit Z?

THE COURT: Now you are coming to it. What do you say, Mr. Morris?

MR. MORRIS: I say Government's Exhibit Z refers to the rehabilitation demonstration pilot project as the final Urban Renewal plan and it governed all projects in that pilot area of which Mr. Karlan's property was one, and therefore, Mr. Karlan, under the contract that he entered into, is subject to the provision that I read to the Court referring to changes in the Urban Renewal plan and any changes in the Urban Renewal plan require the consenting writing of Mr. Karlan.

We argue that the changes that were made subsequent to the time he entered into his contract in

1968 affecting Sites 4 and 30 were changes in the Urban Renewal plan, changes in the approved plan, which were made subsequent to Mr. Karlan's contract and, therefore, require his written consent.

THE COURT: Mr. Morris, I just put it to you very candidly. Will you tell me why we needed Mr. Karlan for anything further than this: Mr. Karlan, did you ever send a written notice of consent on any phase whatever in connection with your building? That's all.

MR. MORRIS: That is all that really is needed.

THE COURT: Then why did you need to show him a contract and all that business and a new piece of paper when you could have very well referred to the original and we would have avoided all this waste of time? You put him on the stand: "Did you say such and such?"

"No."

"The Judge says you did. Go ahead now. What is your answer today to the question?"

Then you put the question. He answers it. Then you say to the witness: "Mr. Witness, did you ever in your lifetime from the time you were born up to

this very second ever send a notice of consent of any kind to the City in relation to your property, no matter what it reveals?"

"No."

Good-bye. We spent about twenty minutes.

Would you say there is some merit in what I say?

MR. MORRIS: There is a lot of merit.

MR. LAND: No further questions.

MR. GOLD: Your Honor, may I say one thing? This is an important point.

THE COURT: It had better be.

MR. GOLD: This whole business about consent to final plans. What we are talking about is two final plans, really. One says final plan for the pilot project, and one says final plan for the Urban Renewal area. It is the contention of the defendants that R relates to changes in the pilot project area.

THE COURT: Bless you, I understand your contention. What do we need him for?

MR. GOLD: I don't. I just want to make it very clear.

THE COURT: The whole point is we don't need this man for this argument.

Is there anything further?

MR. MORRIS: Nothing further.

THE COURT: You had better run out of here before they call you back.

THE WITNESS: Good-bye.

(Witness excused)

xxxx F R A N K S . K R I S T O F , resumed.

CROSS EXAMINATION

xxx BY MR. LAND:

Q Mr. Kristof, refreshing your recollection aboout one portion of your testimony, I understand you testified that as to the relevant community of the West Side area which we discussed that in your judgment between 35 and 40 percent of the families are of low income and you gave us the measurement by which you measure low income.

Using that same measure, could you tell us the percentage of low income families as to all of New York City?

A About the same.

Q Okay. You have had experience a substantial number of years in the past in marketing large buildings, large dwelling units, and the placement of a building

within a particular location within a city, is that correct?

A That is part of my experience.

Q I presume that if a commitment is made to build a particular building, then the remaining problems are to select where within a given area that building will be located and, in order to pick a particular site within a large metropolitan area, you would want to consider many, many factors, is that correct?

A Correct.

Q One of which would be whether a particular building will cause the neighborhood involved to tip?

A If that's an issue in the area.

Q Okay. Where it becomes an issue, you would then want to place the particular building in an area where statistically that particular area is less in danger of tipping than other areas of the city, would you not?

A I would.

Q Mr. Kristof, I show you a pamphlet entitled "Housing: The Economic Factors of New York City, Problems, by Frank S. Kristof."

Did you write this pamphlet?

A I did.

Q On page 28 of that pamphlet, Mr. Kristof, is a table --

MR.MORRIS: Dr. Kristof.

THE WITNESS: You don't have to be formal, really.

Q -- indicating percentage changes of the racial composition of the City of New York from the period 1950 through 1968.

A Right.

Q And you represent in your article that these figures came from census figures, which I presume --

A Census sample studies.

Q Which I presume are correct.

Let us show for the record that the percentage of whites --

MR. LAND: There are three categories of race indicated here, white, non-white and Puerto Rican.

Q Mr. Kristof, by non-white do you mean Negro?

A Correct, blacks.

Q And for the purpose of this we have white, black and Puerto Rican?

A Correct.

Q Let the record show that in 1950 the percentage of whites for all of New York City was 90 percent,

decreasing in 1960 to 81 percent and decreasing in 1968 to 75 percent, is that correct?

A Correct.

Q As to the non-white or black, the percentage in 1950 for all of New York City was 8 percent, increasing in 1960 to 13 percent, and increasing in 1968 to 17 percent.

As to the Puerto Rican population, in 1950 the percentage for all of New York City was 2 percent, increasing in 1960 to 6 percent, and increasing in 1968 to 8 percent.

Is that a correct reading of this chart?

A That is correct.

Q This chart would indicate tome, Mr. Kristof, that there has been an consistent pattern of a decline of white persons within the City of New York and a corresponding increase in the number of black and Puerto Rican persons within the City of New York from 1950 to 1968, is that correct?

A Correct.

Q To your knowledge, is that trend still continuing?

A Yes, it is.

Q Has it accelerated?

A No, no. It's increasing at a decreasing rate.

Q Could you tell me what that means?

A Let me say this: From 1950 to 1960 the net out-migration of white persons in New York was at the rate of about 120,000 persons annually. From 1960 to 1970 that had declined to -- I still had in that book about 100,000, it turned out when the 1970 census came out to be 70 or 80,000. My memory doesn't serve. It was definitely less than the '50 to '60 change. I think it is still occurring. We have evidence it is still occurring but perhaps not even at that full rate. It may be down at the rate -- I am guessing now since I don't have the data -- about 60,000 persons a year out-migration of whites.

THE COURT: Would it be unfair to you, and I don't want to do it if it is, would it be unfair to you to ask you to give us an approximation with regard to those categories in that table that Mr. Land showed you? Would you care todo it or do you think it is unfair to you if you haven't got the data?

MR. LAND: Here is the book, if you need it.

THE COURT: Suppose I were to ask you, can

you possibly give me some indication of what your figures might be as of now, the present time, '70 to '74?

THE WITNESS: The 1970 data are available, your Honor. I gave estimates of 20 percent and 10 percent. I think if I looked them up --

MR. LAND: I do have that data.

THE COURT: I would like to get that in my head now.

THE WITNESS: Might as well have it on the record instead of guessing at it.

MR. LAND: I was coming right to that.

There is a lot of it, Judge.

THE COURT: Just for my purposes, if you just get those particular figures, then you can do what you want.

MR. LAND: I have them. I will get right to them.

I am taking these out of what is known as the Community Planning Handbook, The New York City Planning Commission for Manhattan, District Number 7.

THE COURT: I asked you a simple question and I am told about all kinds of things. Give it to him and let me hear what he's got to say as to the present time. That's all. An approximate idea of

white, blacks, Puerto Ricans. That's all.

Q I pull a sheet from there.

THE COURT: Whatever he wants to look at, that's his business.

Does it enable you to answer my question?

THE WITNESS: Your Honor, these data give us some of the answer but not the total answer.

THE COURT: Question is withdrawn.

MR. LAND: It might be quite helpful, though, as to what's there.

THE WITNESS: Let me explain. You see, your total population is 100 percent in this table. It says white population 70.76, Negro population 24.71.

Now, what this breakdown does not indicate is that from my knowledge of the census data, your Honor, these data incorporate into it white population all the white Puerto Ricans, and white Puerto Ricans consistute, in terms of their self-enumeration about 90 percent white and 8 percent black. So the white-Negro population would have to be re-divided to give you a three-way break.

THE COURT: I understand.

Q Mr. Kristof, are you familiar with the document I have here called the Community Planning Handbook?

A No, I am not.

Q Have you ever seen that before?

A No, I have not.

THE WITNESS: Your Honor, I am very familiar with these numbers.

THE COURT: You have to wait until the next question. Otherwise you become an advocate and the Court is supposed to tell you you are just a witness even though you are an intelligent man, a professor. You are still just a witness here.

THE WITNESS: Yes, sir.

Q Doctor, based upon your best recollection of the current population figures, could you interpolate the chart we just referred to in your article up to 1970?

A Yes. On an interpolated basis, the non-white figure would be pretty near 20 and the Puerto Rican figure would be pretty near 10. Howver, the data that you showed me shows a larger number of black people in the city than I indicated in my initial testimony when I was trying to recollect from my memory.

Q Somewhere around 20 percent black, and as to white, including Puerto Rican, that would be right now about 70 percent, correct?

A Yes, roughly 70, although probably it's a

Q Doctor, in respect to tipping point, I would

little lower.

Q Within a percentage point or two?

A Yes.

Q Based upon this deline of tne white population and the percent ıge increase in black and Puerto Rican population, would you say that that population change is to some extent indicative of the tipping of New York City as a whole?

A In its larger sense, the answer is yes, although when you talk about tipping, we are talking about those areas on the periphery of the solid black areas are constantly being enlarged. This is tipping in a city-wide sense. It can be described by maps which show the Puerto R can areas and black areas in the city from census to census, and if you look at those maps you will see the black areas are constantly enlarging, solid black areas, and they are enlarging around the periphery.

Q In other words, if you would take a community which would nto show the type of trend for New York City as a whole but in fact would be the reverse of that, that would be some indication that that particular community is not tipping, would it not?

A That's right.

Q I show you page 7 of volume one of the

study prepared by Hart, Kravitsky and Stubee and it was prepared by them as planning consultants for the New York City Department of Urban Planning, Office of the Borough President of Manhattan and Chamber of Commerce.

Have you ever seen this document before?

A I have not.

Q Do you know of Hart, Kravitsky and Stubee?

A I do not know them.

Q I show you page 7 of their study containing Table 2 showing a population chart for the mid-west side population trends of Manhattan. I ask you to look at that and, based upon your knowledge of population statistics, whether in your judgment those figures are reasonably accurate?

Do you want to read some of this?

A May I ask when this was published?

Q 1971.

A They should be reasonably accurate.

Q Here is page 6 leading up to the table. You might want to read it.

(Handing)

A They should be accurate.

THE COURT: When you say they should be, according to you are they accurate? That is what I

want to know.

THE WITNESS: It is a question of fact, your Honor. The population volume is in my office and I could tell you in three seconds whether it is accurate if I had the volume in my hand.

THE COURT: You should say so.

THE WITNESS: I am saying it looks reasonably accurate but I cannot confirm it as a fact.

THE COURT: All right.

MR. LAND: By the way, I should make one observation for the record.

The reference here to mid-west side population trends is referring to Planning District No. 7 of the Borough of Manhattan, which includes an area about the same size as Dr. Kristof defined the relevant community for the west side area previously.

Q As to 1970 figures, doctor, they show a total population of 232,000, which is the approximate number you gave on your direct testimony, I believe. As to that 1971 figure, it shows that the white percentage is approximately 81 percent. That figure itself is higher than the city as a whole, is it not?

A Yes, it is.

Q For 1970, which is about 11 percent more

whites in this particular area of the city than the city as a whole for that year.

Likewise, it shows that 11 percent of that population in that area is black.

A That's correct.

Q Which is about 9 percent less than the city as a whole, is that correct?

A At least.

Q And the Puerto Rican percentage for 1970 is indicated to be about 8 percent, which is about a 2 percent difference from the 10 percent figure for the city as a whole.

A Right.

Q Based just upon the 1970 figures for the mid-west side area, would you say that just based upon those '70 figures as compared to the city as a whole that this area has less propensity to tip if there is an increase in black and Puerto Rican and a decrease in white as compared to the city as a whole?

A If you are talking in racial terms, the answer is yes, I would agree.

Q In this table I am referring to, in this planning study, also looking from the 1960 figures to the 1970 figures, does it not reflect that percentage of

white population from 1960 to 1970 increased in this area of the city from 72 percent to 81 percent?

A Although numerically it remained virtually constant.

Q Numerically it remained constant but percentage-wise it increased?

A Correct.

Q That differs considerably from the pattern of New York City as a whole?

A Yes, it does.

Q Likewise, there was a net decrease in black population from 1960 from 13 percent, is that not correct?

A That's what it says.

Q And that itself is completely different from what happened in New York City as a whole during the same period?

A Correct.

Q The Puerto Rican population decreased from 15 percent to 8 percent?

A Yes.

Q And that again is completely opposite from what's happened in New York City as a whole during the same period of time?

A That's correct.

Q Doctor, you say you have these figures in your own library?

A Right.

Q Could you do the Court a favor and verify that these figures are accurate so that there will be no doubt, at least that they are reasonably accurate, so there will be no doubt what is represented here is probably so? Could you do that for me?

A I could.

Q You have the 1960 and 1970 figures?

A Right.

Q I speak of Planning District 7. You know what that is.

A If you give me the boundaries.

Q I will do that at the conclusion of your testimony.

Assume that the population trends which I just showed you for District 7 in Manhattan, including the west side, are accurate. Would that show that by reason of the fact that there is an increasing percentage of white that that area itself is in less danger of tipping than other areas of the city in which the trend for the city as a whole is evident?

A I would say so, yes. Counsel, if I may say, we are talking about tipping in two contexts. Here you are talking about real racial breakdown.

Q I know. I will get to the economics in a minute. You have to look at both at the same time, do you not?

A Yes.

Q One thing which was important in your testimony before, we had isolated that certain of the more egregious social problems occur in families where there is only one parent, is that correct?

A That's correct.

Q So one factor of tipping which one would want to look to in a particular community is the number of such types of families currently in that community as compared to that type of family in other areas of the city?

A That's right.

Q And if a particular community shows a less percentage of single-parent families than other areas, that particular community would be in less danger of tipping, is that correct?

A That's correct.

Q Dr. Kristof, referring to a table from the

Community Planning Handbook, I show you a chart which lists a number of figures for New York City as a whole and does it not indicate that the single-parent families with members under 18 years consist of a total of 8.21 percent of the total population of the City of New York?

A That's what it says.

Q That is the kind of family we are talking about, the single-parent family with minor children.

A Right.

Q Based upon your knowledge of population -- this is as of 1970, I believe, or after -- do you believe those figures are correct, that percentage is correct based upon your knowledge?

A Those look like preliminary numbers but they are on the whole accurate. I would accept them as reflecting the basic facts.

Q Also, it is also broken down to Manhattan as a whole and that same category of individuals shows that for Manhattan as a whole the single-parent families with minors is 6.93 percent of the total population, does it not?

A Yes.

Q I show you the population profile for Manhattan Community Planning District No. 7, which includes

the general relevant community which you defined. Does it not show that the percentage of the signle-parent families with minor children is 5.12 percent?

A That's what it says.

Q That figure of 5.21 percent is less in New York City as a whole and less in Manhattan as a whole, is it not?

A Correct.

Q So that within one of the communities within Manhattan, being the relevant community you have defined, we find that the percentage of single-parent families with minor children is better for this relevant community than Manhattan as a whole or New York City as a whole?

A Correct.

Q And based upon that fact alone, would you say that this community has a lesser propensity of tipping by reason of that fact?

A Yes, I would.

Q The next thing I want to look at is the income levels. Correct?

A Correct.

MR. LAND: Your Honor, I am getting there.

THE COURT: It's all right. You do what you think you ought to do. The value of it remains to

be seen.

As I get it, all that you have been testifying to in the last half hour goes down the drain, to use a witness' expression here, if the economic factors are so drastic as to result in tipping in and of themselves, is that not so?

THE WITNESS: Well, your Honor --

THE COURT: I don't understand it. You are supposed to teach me.

THE WITNESS: That is in the direction. It would require qualification.

THE COURT: What qualification? If the economic factor is drastic?

THE WITNESS: The answer is yes.

THE COURT: Thank you. Then I understand what you are talking about. I want to clearly understand you. Go ahead.

Q Dr. Kristof, I pull again from this volume entitled The Community Planning Handbook of District No. 7 more statistics, now dealing with economics, and I show you Table 4 for New York City as a whole. In particular, I would like to indicate the figure as to, first, the median income for New York City as a whole.

Do we see that?

A Median family income?

Q Right.

THE COURT: I am going to suggest something. Don't think I want to interfere. I don't.

You have a perfect right to advance the cross-examination and the lines that you have. I have no quarrel whatever. As to its value to me, that is another matter. You have a right to do your job your way and that's what you are doing. You are confronting him with material that he has to examine. We are all agreed this is an intelligent, well informed witness. I want to get the benefit of what his testimony has to say. He has to examine it. He is cautious. He has to examine this material It takes time to examine it. If he can't give me more positive answers and he can only give me a general reaction, that isn't particularly helpful. I am trying to lead up to this: Why wouldn't it be advisable to give him the material that you want him to study, point out to him what it is you wish him to testify about, give him a chance to examine it and have him come back on the stand?

MR. LAND: That is a good idea.

THE COURT: Thank you. I think that ought

to be done. You wind up usually with a witness being unhappy because he can't be himself and he can't really give that degree of authenticity that he is accustomed to give to questions. We are not going home. This is not to enable us to go to a social event. We will have other witnesses here.

Q Doctor, I will give you copies of the documents I have been referring to. I want you to look at them at your leisure and study the figures we discussed or any other figures that seem relevant to you.

THE COURT: May I make another suggestion?

MR. LAND: Yes.

THE COURT: Write a letter or frame something and have Mr. Morris say okay. Send it to the doctor. Give him whatever material is necessary, attach it. Then he will come back on the stand and be ready to answer.

Wouldn't that be a good idea?

MR. LAND: Yes.

Could you give me your address, doctor?

THE COURT: We will get it from Mr. Morris later.

MR. LAND: Fine.

THE COURT: Have you got another witness that you could call?

MR. MORRIS: Yes.

THE COURT: Since the bulk of your testimony is going to be along the same lines and Mr. Gold and Mr. Douw want a chance at examination and if you have the same kind of material you should do the same sort of thing. We might as well excuse the witness.

MR. GOLD: Mr. Land is covering it adequately.

THE COURT: Mr. Land, am I saying that primarily you have the material you have already indicated, that is the end of your cross, that would be all your cross?

MR. LAND: I have a few more things.

THE COURT: Go ahead. Finish up everything except the tables.

MR. LAND: The bulk of it dealt with these statistics, almost nauseating technicalities.

THE COURT: That is where you come in because you don't push it away. I admire your patience.

MR. LAND: Okay. We thing the statistics are exceptionally relevant in this case.

THE COURT: Yes, although as some great author said with regard to books, they are a bloodless substitute for life, and statistics are somewhat of a bloodless substitute for much evidence that is vibrant

and meaningful and saturated with significance. I don't say that it doesn't belong, but to say that that's it be-all and end-all, no, I don't agree.

do you feel that a straight Mitchell-Lama project is

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Q Doctor, in respect to tipping point, I would like to direct your attention to a statement relied upon by another person who held himself out to be an expert, Mr.Fried, who pointed out certain portions of a document which he found exceptionally relevant in forming his opinion as to tipping.

I would like to read that to you. I am referring to Plaintiffs' Exhibit 68. I am quoting from a Law Review article in the Stamford Law Review by Bruce L. Ackerman.

Do you know him, by the way?

A I do not.

Q (Reading) "To determine whether the integrated status of these projects is attributable to the use of racial occupancy controls, one must first examine the process of racial turnover known as the tipping phenomenon. The tipping principle states that, when white families will abandon and avoid a given housing development or neighborhood after the black percentage of the population exceeds a certain point usually assumed to be somewhere between 30 and 50 per cent black."

Do you agree with that statement I just read? In particular there are three things I want to bring to your attention, that the tipping point is generally assumed

Urban Renewal area. This was at a time when conventional

to be between 30 and 50 per cent, is that not correct?

A No, it is not correct.

THE COURT: You are putting two questions in one.

Did you understand the reading?

THE WITNESS: Yes.

THE COURT: What is your reaction to it? Do you accept it?

THE WITNESS: I have some exceptions to it. As a generalization it contains essentially the truth but there are enough exceptions to point them out.

If I may make a generalization, your Honor, the tipping of any neighborhood, the tipping point of any neighborhood, is directly related to the basic strength of that neighborhood. The stronger the neighborhood, the stronger the economic and social structure of that neighborhood, the more it will resist tipping and the more so-called change in racial characteristics it can withstand before it does tip.

There are some areas that are so weak in terms of the neighborhood strength, all they need is the introduction of five or ten per cent and you will start the tipping process.

Q Reading also from the Law Review article,

I wonder if you agree with me with this observation made by Mr. Ackerman on Page 260 of the Stamford Law Review article.

"The projects that were tipped had one or more of the following characteristics:

"(1) Location in or near a minority area.

"(2) A black population well in excess of 30 per cent of the total population.

"(3) A combined non-white population exceeding 50 per cent of the total project population."

Do you agree with that?

A Given that set of facts, yes.

Q I want to make sure we understand each other.

THE COURT: Every time you get an answer you don't like you want to make sure you understand each other.

Q Projects which have tipped have at least one of three characteristics indicated here: Either it is located near a minority area -- correct?

A Yes.

Q Projects which have tipped, they have either one or more of the following characteristics: It is located in or near a minority area, right?

A Correct.

Q Or the black population is well in excess of

30 per cent of the total population?

A Correct.

Q Or a combined non-white population exceeds 50 per cent of the total project population?

A I would accept that statement.

Q The final question on the subject: If a particular community has none of these characteristics, then would you be of the opinion that its chance of tipping in the immediate future is minimal?

A No, I would not.

Q Would you say it would not tip at all?

A No. I would not.

You have described, if I may, certain necessary conditions for tipping but you have not described all of the conditions.

Q We must have at least one of these conditions before an area will tip, is that correct?

A No. I say those were all. I say those are the necessary conditions but there are other situations, as I earlier stated. There are areas that, as a market area, they are so weak that all you need is the introduction of five or ten percent minorities into the area.

Q The introduction of five or ten per cent will be in a community which has one of the three characteristics

I just mentioned?

A Not necessarily. No. No.

THE COURT: Mr. Land, I am sure you won't be against this.

Now explain that to us in detail. You go ahead and illustrate it, do anything you wish, so you can nail home to us what is significant to you with respect to the issue of tipping.

THE WITNESS: Yes, your Honor.

Let me say this: White areas that have a lower middle class population that are not strong ethnic areas but relatively mixed ethnically but essentially white areas, but lower middle class, they will have an easier propensity to tip with the introduction of low income minority populations than a strong area like the West Side of Manhattan . We regard that as a much stronger area in terms of this whole context.

I give you an example, Brownsville. What happened there is an example of a lower middle class white area, although it had a strong ethnic population, predominantly Jewish population but lower middle class, that is an area that fell apart in a relatively short period of time, a period of ten years, in terms of its ethnic distribution and racial distribution with the impact of initially

a few large public housing areas right in the center of the area.

I described that in that booklet you are ready to quote, looking at.

Q You are contrasting that to the West Side of Manhattan?

A I am. As I say, the West Side area in general is a strong, one of the strongest market areas of New York City.

MR.LAND: No further questions, but I would like to have the doctor read the statistical material I gave him.

THE COURT: That has been nailed down. We don't have to refer to it. It is in the record.

Mr.Gold. How long will you take?

MR. GOLD: Not too long.

THE COURT: That is no answer.

MR. GOLD: Ten minutes.

THE COURT: We will take a short recess.

(Recess.)

THE COURT: You may proceed, Mr. Gold.

CROSS-EXAMINATION

BY MR. GOLD:

Q Dr. Kristof, during the time you spent with

HRB and HDA, you mentioned you were much concerned with the City's debt limit.

A That's correct.

Q In connection with that debt limit and your function at the agency, you were looking to put together a building which would, so to speak, pay its way, is that correct?

A It was required by the statute.

Q To be excluded from the City's debt limit?

A Yes.

Q Your primary function at the agencies then was to make sure that the income of the project would outweigh the debt service and operating expenses?

A That's correct.

Q That is true also, is it not, with respect to the project in the West Side?

A That's correct.

Q So that you never really got into the planning function on the West Side, is that correct?

A That is correct.

Q In connection with Mitchell-Lamas projects, what were the average room rentals that these projects were coming in at, let's say, inthe period between 1960 and 1965?

A If I may, between 1960 and 1963, we had a period of relative stability during which the limit, the administrative limit, for Mitchell-Lama was $30 per room per month.

Q What do you mean by relative stability?

A That construction costs in that period were not climbing inordinately to the extent that we could not predict with reasonable accuracy what they would be from one year to the next.

Q Between those years then, 1960 and 1963, at a $30 a room maximum , given the economic factors of those years, straight Mitchell-Lama construction was feasible, is that correct?

A That's correct.

Q It was marketable?

A Correct.

Q Following 1963, was there a change in that situation?

A The change began in 1964.

Q What was that?

A That was the beginning of the rise of construction costs at a somewhat more rapid pace.

Q How rapid?

A Also interest rates. It was the beginning of

the upward move of interest rates which did not really move sharply until 1965, but we already had perceptions of it in 1964.

Q Are you referring now to the interest rate which the City would be paying on its bonds?

A That's correct.

Q So there was an ncrease?

A That's right.

Q In 1965 that became more of an increase?

A That's correct.

Q And that meant, did it not, that the financial structu e of aproject changed perceptively?

A That's correct.

Q And the rents increased?

A They did.

Q How much of an increase would you say over the $30 maximum?

A I can trace it for you relatively accurately because this is something I was directly involved with.

In 1964, althoughwe had an administrative limit of $30, the figures we knew were going to come out at at least $35 even though we were planning with the administrative limits of $30. We knew they were going to hit 35 when they came onto the market.

In 1965 it became clear that those Mitchell-Lama rents were moving up to $40 and over $40.

In 1966 the estimate for Mitchell-Lamas was so indeterminate because of the bond market situation and new construction contracts that were being negotiated that we were afraid to make solid predictions as to what was going to happen to rents of projects that were at that time in planning.

As a matter of fact, at one point in time Mr. Jason Nathan suspended the program, prosecution of the program, until we would come to a decision as to whether we would be willing to build additional housing that looked as if it was going to come out in the sixties. At that time it was a shocking concept.

Q By that you mean if the rents came out in the sixties you would have real difficulty marketing the units?

A That's correct.

Q Was the program suspended at one point?

A It was administratively suspended until we had lengthy discussions within the agency about what we were going to do about it.

THE COURT: When you say in the sixties --

THE WITNESS: This was 1966, your Honor.

THE COURT: Is that what you meant by "in the

sixties" or did you mean dollars?

THE WITNESS: Dollars. I am sorry.

THE COURT: Later on there will be an argument, he meant in the sixties, meaning the year.

THE WITNESS: I am sorry.

THE COURT: These lawyers, they look at me, "Why is he always butting in? He doesn't give us a chance."

They look as though they were being taken advantage of and all that, but I insist that these things be clear.

Proceed.

Q Following that period of time, 1967 for Mr. Nathan, did the costs continue to increase?

A The costs did continue to increase, they no longer jumped as sharply but they moved up. They moved up steadily.

Q Have they not moved up steadily up to the present time?

A They have.

THE COURT: So your $30 unit, a room, from '60 to '63, became what in '64, approximately?

THE WITNESS: In 1964 it became $35.

In 1965 it became $40.

In 1966, it became -- we were concerned it was

going to exceed $60 because we had a jump.

THE COURT: What did it actually result in, approximately?

THE WITNESS: Approximately those projects wound up between 60 and $65 when they hit the market around 1969.

THE COURT: And the next year?

THE WITNESS: In 1967 we were estimating projects between $65 and $70. About $65.

THE COURT: You are talking about that same unit?

THE WITNESS: The same unit. Identical unit.

THE COURT: Go ahead.

A 1968 we were estimating between $68 and $72.

In 1969 we reached $70 to $75.

In 1970 we were ranging in our computation between $75 and $80.

In 1971 we were about $78 to $82.

In 1972, our estimates ranged from $82 to $88.

In 1973, last year, our estimates went between $90 and $100.

THE COURT: So far this year what?

THE WITNESS: Today we do not make a calculation for any Mitchell-Lama in the City of New York at less than $110 and nearer $120, and in some cases $130 for

anything that will start in the year 1974.

THE COURT: When you say "estimate," did those estimates actually prove to come out to be factually true?

THE WITNESS: Your Honor, they exceeded our estimates.

THE COURT: Proceed.

Q This is a combination of increased construction costs, or what we call a spiraling increase in construction costs, as well as interest rates?

A Both of those and sharply increasing operating costs, and the addition of a new dimension, the protection of our buildings. The introduction of guard services, round-the-clock guard services, in these buildings, which we never before contemplated in the early 1960s.

In 1960, 1963, the concept was one only -- the only people that had round-the-clock service at their front door were luxury apartment apartment houses. Today that is an absolute necessity for any kind of apartment house.

THE COURT: Why?

THE WITNESS: In the low income areas in which this housing is largely built the deterioration and the vandalism and behavior patterns of people in general has changed perceptively compared to the late fifties and early sixties.

Q There is Mitchell-Lama in low income non-ghetto areas?

A Yes. But even in those areas we must provide some measure of protection.

Q In York Hill Apartments, York Avenue and the 70's or 60's, you have guard services there too?

A I think they have, yes.

Q There came a point then in your work at HDA and HRB, or the other way around, where you had to consider to look for some other way of financing these buildings in order to make them feasible or marketable for people to buy or live in?

A That's correct.

Q Was that one of the reasons why the City began to finance some Mitchell-Lama developments with so-called 236 financing?

A That's correct.

Q When a building is financed with 236 funds, that would perceptibly reduce the rentals, is that correct?

A Yes.

Q To about half --

A 55 per cent of the ostensible Mitchell-Lama rent.

Q In your opinion, sir, given the cost per room on straight Mitchell-Lama that you have just testified to,

do you feel that a straight Mitchell-Lama project is today marketable in the West Side Urban Renewal area?

A I don't think so.

Q But it is much more marketable, is it not, at the 236 rent levels?

A Yes, indeed.

Q That same spiraling of construction costs and interest, operation, had an effect on conventional building, did it not?

A Yes.

Q Would you attribute that effect to the fact that the fully tax-paying housing originally planned for the West Side Urban Renewal area was really never effectuated?

A I have some knowledge about that because I was there at the time.

One reason why the conventionally planned housing on the four corners of 96th Street -- I never remember the numbers. We had straight conventional housing planned for four corners of 96th Street and Columbus or Amsterdam -- I forget. I think it was Columbus.

The FHA gave us their market opinion back in 1966, I believe it was, that they did not think that rents over $60 a room a month could be marketed in the West Side

Urban Renewal area. This was at a time when conventional housing would have to be built at a planned rent of $70 to $80 a room. Consequently the FHA's reluctance to insure Section 220 projects on the sides was one of the reasons for the abandonment of them as conventional housing, because the FHA did not have the confidence in that location that some other people did.

Q Was that a primary reason for abandonment of that type of housing?

A There were other reasons.

The community groups in the area were not terribly enthusiastic about the concept of conventional housing. They were constantly advocating that it be switched to middle income housing anyway.

The reluctance of the FHA plus the lack of enthusiasm for full tax-paying high rent housing in the area led to its ultimate demise.

Q At the time you were with the City agencies you worked on Mitchell-Lama buildings in which there would be a percentage of middle income and a percentage so-called of low income, is that correct?

A That's right.

Q Did you work during the time the State's capital grant program was being used in the area?

A Yes.

Q In those projects what was the limit of the so-called low income units in terms of percentage? Do you remember?

A Well, at the time that I was working we were talking in terms of 20 per cent.

Q Was there a specific reason for 20 per cent that you know of?

A Yes. It was in terms of its impact on the marketability of Mitchell-Lama buildings. It was felt that if we put in too many low income apartments we would not get families willing to pay the $50 or $45 that was required compared with the $20 a room being paid by State capital grant families. The spread was becoming too wide and would adversely affect the marketability of the buildings.

Q Was there any tax reason for keeping the percentage down to 20 per cent in the lower income units that you know of?

A I don't think so.

Q Was there any reason, for example, if you increased that percentage, the balance of the people in the building might lose certain income tax benefits, particularly in a co-op?

A No. Not that I know of.

Q The concept of putting middle and lower income families in one building, in terms of the percentage of low income families, do you understand that to mean that the families in the low income units would be families with incomes lower than the families in the balance of the units?

A Yes, indeed.

Q The terms middle income and low income were not really necessarily the terms that were used to describe this phenomena, were they?

A Even at that time, yes.

Q But the basic concept was that in certain percentages those families would be families lower than the balance?

A Yes.

THE COURT: Since they were used with the frequency you have indicated, I would like to understand what the criteria were all along as to what one meant when he said "low income" or what one meant by "middle income"?

THE WITNESS: Y our Honor, the peculiarity of the Mitchell-Lama program is such that eligibility for Mitchell-Lama housing is tied directly to the gross rent, the annual rent being paid by the tenants, so that as the

annual rent increases the eligibility incomes increase because for families of one, two, or three persons the maximum income they could have is six times the gross annual rent, and for families of four or more persons the maximum income they could have is seven times the gross annual rent.

This is why we have a terrible confusion as to what constitutes a middle income family. It changes every years as the gross rents change.

THE COURT: Those are fundamentally --

THE WITNESS: That is a legal definition of a middle income family.

THE COURT: Thank you.

Q With respect to that same breakdown in a 236 building, those prople or those units allocated to the lower income families are in fact given to families whose income is lower than the balance of the building, is that correct?

A Certainly.

Q It matters not for example if that income is $500 or a thousand dollars lower, so long as they are lower, isn't that correct?

A They had to be within the public housing income limits of the time.

Q But the 236 limits are in excess, are they

not --

A 135 per cent of public housing.

Q So there is a difference then in terms of income levels between 236 units and public housing units?

A 35 per cent.

Q When one talks about tipping, Doctor, the number of factors that go into determining whether a particular neighborhood is going to tip might almost become numberless?

A There are very many factors involved.

Q You here have not even discussed possibly any number of factors that might be involved in making that determination, right?

A That's correct.

Q For example, if another person would come on the witness stand as an expert he might name yours and another 100 factors in a given neighborhood, correct?

A Yes.

Q It is really difficult, is it not, to take raw numbers, such as 2500 low income units and 200-some odd wellfare families, and the various numbers that Mr. Morris gave you in his hypothetical, and come to a conclusion that based on those raw numbers an area is tipping or will tip?

A It is difficult, and if you recall in my testi-

mony I said "Will create conditions whereby families will be." I was very careful about that statement.

THE COURT: Yes, you were indeed.

Q You mentioned that the West Side is probably the strongest neighborhood in the City of New York in terms of marketability.

A Not the strongest, no, sir. It is a much stronger -- but by no means the strongest.

Q Stronger than Brownsville?

A Yes.

Q Stronger than the South Bronx?

A Yes, indeed.

Q And Crown Heights?

A Yes.

Q That would mean then, would it not, that that area would have a greater resistance to tipping than for example Brownsville?

A Yes, indeed.

Q In terms of West Side strength and stability, could you give us an approximation as to where it stands as compared to the rest of New York City? For example, is it in the upper quarter stability-wise?

A I would say that it ranks in the upper quarter of the City as a whole, but that is not saying very much

because the City as a whole in terms of its market, it has large expanses of terribly weak market areas.

Q Of course it also has areas of strength?

A Yes, indeed. They are less frequent than areas of weakness by a large margin. I should make that clear. We have to go really hunting hard to find strong market areas in the City of New York, and most of them are in certain areas of Queens and in certain areas of Manhattan, and a few older stable areas of Brooklyn, and Riverdale, northern Bronx.

Q One of those more stable areas in Brooklyn would be where you live in the Heights in Brooklyn?

A That is an area that has come back a long while, like the Urban Renewal area.

MR. GOLD: Thank you.

CROSS-EXAMINATION

BY MR. DOUW:

Q Dr. Kristof, when you were describing the tipping process in terms of population turnover at a fairly rapid pace, I believe you said, I think in response to His Honor's question, that the change involved, it happened for better or for worse, is that correct? Did you say that?

A Let me just expand, if I may.

Q Yes.

A Generally the term tipping is used in a connotation that the area is going downward. It can go upward too.

Q It can happen in the other direction?

A Yes. We don't use the term tipping in connection with it.

Q Would you yourself call this a tipping process?

A I don't like the term at all. I would never use the term.

Q What term would you use?

A Improvement or deterioration of an area.

Q Let's drop the term and talk about the process.

A All right.

Q Check me if I am correct about how you describe the process: As I understand it, it is a population turnover, a certain population moving into a community and another population moving out, and this process happening within a relatively short period of time, is that accurate?

A On the downward side, yes, but not on the upward side. It does not happen that way on the up ard side.

Q The upward tipping doesn't happen --

A It is a much more gradual thing and necessarily because if an area is improving it is becoming more

attractive to different economic groups and social groups of people who are beginning to almost infiltrate an area which was regarded by most people as unattractive and that they were unwilling to move into.

The people, some people, to whom, for various reasons, whatever reasons, there are good buys in the area like the brownstoners who moved into the West Side area, they were gambling on the future because they were getting those structures for virtually nothing, and they were forecasting its upward movement.

End 4 PM

Q All right. I think we are talking about a situation where you have a community that can be characterized as having urban blight in the terms that you were speaking of in your direct testimony and that over a period of time, you say it's a longer period of time, I gather that that community emerges more and more to become a stable, safe community with adequate city facilities, adequate police protection, adequate sanitation service and the like, is that correct?

A That's correct.

Q And you mentioned people coming into an area like the West Side Urban Renewal area to purchase brownstones and take a certain risk that in the future the area will be no longer characterized as that of urban blight, is that correct?

A They are pioneers.

Q So that the first people who come into the area are -- the word you used is pioneers.

Now, later on in this process people who follow them come because -- let me withdraw that and rephrase the question.

Does the process happen that more and more people are encouraged to come into this area once having seen the first group of people come into the

area? Is that a fair comment?

A And they stay, yes.

Q And they stay.

Do the new groups coming into the area thereby accelerate, do the numbers accelerate as time goes on?

A It depends entirely on the opportunity, you see, depending on the amount of new or rehabilitated housing placed on the market, it depends on the number of buildings that are available for purchase versus people holding on to their -- lower income people holding on to their rent-controlled property and resisting.

Q Let's take a smaller community that has nothing but old brownstones. I think there are certain areas of Brooklyn -- perhaps Brooklyn Heights doesn't describe this --

A Park Slope.

Q Park Slope. Let's take Park Slope.

Was Park Slope once an area that could be characterized as having urban blight in the terms that you have used?

A yes, indeed.

Q Okay. Has there been there any high-rise

residential new construction in Park Slope?

A There has not.

Q There has not.

Park Slope is an area characterized entirely by brownstones, is that correct?

A That's correct.

Q And is it now, today, an area that is stable and safe in terms that you have described it?

A No, by no means.

Q By no means. Would you say that it's in the middle of this upward tipping process that we have been talking about?

A It's in the earlier stages. There are still many good opportunities to get good buys in Park Slope for this process, but there is no question that the improvement is perceptible because the cost of those old brownstones, which you could have picked up six or seven or eight years ago for $10,000 or $15,000, has now gone up to $25,000, $30,000 in some cases, where there already have been improvements made. It is not aided by any kind of public activity like the West Side Urban Renewal area. When you buy a brownstone it is full of people and there may be rooming house tenants. You have to find some way of relocating them

or getting them out or bribing them out of the building before you can get ahold of it and renovate it. So that's why I say it's a much more difficult process where you do not have public activity moving in to accelerate it.

Q Let's come back to Park Slope once again as an example.

When did this process begin, if you know? I recognize you can't pinpoint it.

A In the early 1960s, I would say.

Q Early 1960s?

A Very early, yes.

Q And has there been any change in Park Slope in terms of city services such as sanitation and police as a result of the changes or parallel to the changes that have occurred?

A I think there have been modest improvements, yes, partially as a result of the civic activity of the new people who came in, who are younger, much more aggressive and brighter and know something about the processes of obtaining city services, and they go out and fight for them.

Q Would you say the area is safer than it was in the earlier '60s?

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A I think so, yes, in those areas where we have had definite improvements in a number of blocks that have been rehabilitated in large part.

Q And you say that this is happening without governmental aid, is that correct?

A That's correct.

Q Is this happening in parts of the upper west side?

A Yes, it is.

Q What areas?

A I think we discussed earlier this morning Riverside Drive, in which there are no governmental processes involved, but change from rooming house tenancies, single room occupancies has been gradually eroded and shifted back to apartment house type of useage. West End Avenue never did go down to that extent, so it remained basically stable, but, for instance, I think in recent years there have been a number of improvements in the internal operations and maintenance of the buildings.

Q Let me ask you this: The area f om Amsterdam Avenue to Central Park West that is south of the Urban Renewal area, south of 87th Street, are you familiar with that area there and can you give us your

opinion as to its change, if any? I am thinking about the 70s and 80s.

A In the lower sections there have been improvements. In the 70s definitely.

THE COURT: You mean in the area of Lincoln Center?

THE WITNESS: Yes, and extending part of the way up north, 72nd Street, 73rd, 74th. I think there are some definite improvements, because you have had the impact of two major public activities, Lincoln Center and the West Side Urban Renewal area, and the improvements have moved upward.

My reaction to the area south of 87th Street -- you know, the buildings on the south side of 87th Street are tall 1920 structures which reflect the 86th Street construction. 86th Street is a good block and 87th on the south side is relatively good, too. But there is still a lot of deterioration once you get below 86th Street, in the early 80s. There has been improvement. I think on balance there have been some improvements.

THE COURT: I don't know whether I should say this. I might as well. I pass that area quite often. The area I am about to talk about is really an

eyesore.

Columbus Avenue right across the street from the Museum of Natural History from 77th Street up to 83rd, it's shabby, there are two-bit operations, those that are operating. You know what I mean by two-bit. Nothing stable, solid, sort of fly-by-night. Many of them are closed.

Can you give me an explanation for that debacle?

THE WITNESS: Your Honor, that area was inhabited by the migrants that moved in the early 1950s. They are still there to a large extent, to the extent that they haven't been able to move out and find better quarters. There is a lot of low income housing in that area, low income rent-controlled housing in that area, which people are holding onto. There are tremendous bargains.

THE COURT: Mr. Douw, I am sorry to have interrupted.

MR. DOUW: I have a couple more questions.

Q In those areas on the upper west side that you mentioned that are on the upgrade, is this without direct governmental assistance?

A By and large, yes.

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MR. DOUW: Thank you.

THE COURT: Thank you, gentlemen.

MR. GOLD: I have one question.

THE COURT: Yes, certainly.

XX

BY MR. GOLD:

Q Doctor, as a result of the conditions, market condition changes, that you have testified to over the period from 1960, let us say, up to the present time, would it be fair to say that as a result of that the Urban Renewal process is a constantly changing process?

A I don't understand your question.

Q Let me put it this way. You testified that rentals, Mitchell-Lama rentals in particular, changed perceptibly over the thirteen or fourteen years from 1960 to the present. What I am saying is, as a result of those changes in market conditions, rental conditions, would you say there was need for change in the Urban Renewal plan in the process of making this area work?

A There always have to be adjustments in the face of those conditions, yes.

MR. GOLD: Thank you.

MR. MORRIS: I have one question.

THE COURT: Hold it. I will tell you why. We have to have Dr. Kristof come back. He has to

testify and complete the cross-examination by Mr. Land.

If you would be good enough to wait around, you will find that Mr. Land is the height of courtesy and he will supply you with that which he wants to call to your attention so that if you can come back at a time you and Mr. Morris agree it will be all right with me.

I don't mind saying this to you. There undoubtedly will be others who will take the stand who will be equally impressive. I am reaching out for edification. Mine is the responsibility. I have to look to you people to make it clear to me, and so it's in that spirit that I say that you have made an impressive witne[illegible] Whether I agree with your conclusions when I come to gather all the pieces, I don't know. But to say that you are impressive is the least that I can say.

Why do I emphasize it? Because I want you, please, and this is a direction of the Court, to look over your testimony, which will be transcribed, so that on the day that you return you can amplify, correct your testimony in any respect. I may look at it myself so that I can have questions for you when you return: Will you explain this? I didn't grab it before. Now

I would like you to explain such and such.

So that in the spirit of trying to get myself well informed, I am ask-ng you to spend some extra time readying yourself for the completion of your testimony.

Is that clear, doctor?

THE WITNESS: Yes, your Honor. I will be happy to do so.

THE COURT: Thank you. That will give you your chance, Mr. Morris, on redirect and wrap it up. All right.

Thank you, doctor. Won't you stay. I will only keep the lawyers for a few minutes. Take a seat there.

(Witness temporarily excused)

THE COURT: Gentlemen, may I just dispose of something that you ought to have at this juncture as you go forward in your efforts to whittle down the amount of time that should be spent for the balance of this trial.

I would like to tell you what we have decided with regard to oral reports and with regard to record summaries. That has come up already. You remember one of the witnesses was called and he was shown a schedule and Mr. Land sprang to his feet and he said,

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"Nothing doing. You can't give me that schedule. You have to give me the basis on which the schedule was predicated", and you said it so effectively that I began to lean a little bit your way. Here is what the law has to say for the edification of all of us, including the Judge.

We have also the issues of whether summaries of business records are admissible where such records are lengthy and whether oral reports are admissible under the business records exception to the hearsay rule. As to the former, the law is clear that where a witness who is familiar with the contents of lengthy and detailed records testifies to the general result of an examination thereof by a summary of their contents, the entire mass of the records themselves need not be admitted into evidence, so long as the records are available to the opposing party for inspection, if desired, and for use in cross-examination. So long as the records themselves will be admissible, if offered, neither the business records exception to the hearsay rule nor the best evidence rule are violated by the presentation of their summary. Peter Kiewit Sons' Co. v. Summit Construction Co., 422 F.2d 242 (8th Circuit, 1969); Ryder Truck Rental Inc. v. National Parking Co.,

380 F.2d 328 (10th Circuit, 1967); In re Shelley Furniture, Inc., 283 F.2d 540 (7th Circuit 1960). See also Wigmore on Evidence, 3rd Edition Section 1230.

As to the latter issue, the admissibility or oral reports, the usual statement of the business records exception suggests that such reports are not generally included. McCormick on Evidence, 2nd Edition (1972) Section 307. However, under the federal statute governing this exception, 28 U.S.C. Section 1732, the trial court has discretion in determining whether a record offered has an inherent probability of trustworthiness. LeyRoy v. Sabena Belgian World Airlines, 344 F.2d (2nd Circuit 1965). Indeed, the underlying purpose of that statute is "to bring the realities of business and professional practice into the courtroom in usable form." Corte v. New York, New Haven and Hartford Rail Co., 191 F. 2d 86.91 (2nd Circuit 1951).

Accordingly, in the contest of this litigation we have determined to exercise that discretion as follows: Where testimony has been offered on the basis of oral reports submitted to the witness which are otherwise admissible under the business records exception, that testimony will be admitted provided it is further established that the person making the oral report had

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a duty to the witness to do so, and thus you have your superintendent of the building getting all the reports from the janitor -- forgive me. I shouldn't use the word "janitor." It is offensive. You are supposed to use the word maintenance man.

So that we are right in admitting what the maintenance man said to his superior with regard to complaints, with regard to this, that and the other appertaining to that building.

As Wigmore states, where the element of duty is established, "It may be conceded that an oral statement would be scarcely inferior to a written one in trustworthiness."

That makes sense.

Wigmore on Evidence, 3rd Edition (1940) Section 1528, See also Pedelis v. Transcontinental and Western Air, Inc., 187 F.2d 122 (2nd Circuit, 1951), cert. denied 341 U.S. 951 (1951).

We note that our rule is consistent with the English rule regarding the business records exception which provides that where the limit of duty exists, an oral statement is equally admissible thereunder.

Let me expand on that so you will see what the Court's position is with regard to such future

evidence. We are going to follow the English rule which really is in essence a direction under our own circuit.

Under English law, the following requirements must be met for a report or record to be admissible under the business records exception to the hearsay rule.

One. It must have been made in the regular course of business, as under the American rule.

Two. It must have been the regular course of such business to make such report or record within a reasonable time of the act or transaction recorded therein, as under the American rule; and

Three. There must have been a duty to a third person in the course of which the report or record was made.

Wigmore on Evidence, 3rd Edition (1940) Section 1523-1526.

Gentlemen, as I said yesterday, if you have any comments or any criticism or any differences or reactions to what the Court has pronounced, you have within ten days from today either orally or in writing to have your motions on this matter properly reflected and made a part of the record.

May I bother you with one more item? This

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is to facilitate you since I have just gotten it together. This is to help you see your way ahead and to prepare accordingly.

Consistent with what we now see ahead, here is the schedule. You might as well write it down or get it from the court reporter.

Tomorrow we meet at 9:00 o'clock and sit until 1:00. Monday, May 13, from 12:00 o'clock to 5:30 in this case. I have other matters on in the morning. Tuesday, from 9:00 o'clock to 5:00. Wednesday, from 10:00 o'clock to 5:00. Thursday, from 9:00 o'clock to 5:00. Thursday evening, 7:45 to 9:30. Next Friday, a week from tomorrow, 9:00 o'clock to 1:00 p.m.

Thank you, gentlemen, for your courtesy to one another and to the Court.

Would you be good enough, Mr. Clerk, to announce an adjournment until tomorrow morning, 9:00 o'clock sharp.

(Adjournment to May 10, 1974, 9:00 a.m.)

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
Frank S. Kristof (Resumed	2504	2520 2628		
Miles L. Owens	2553	2563		
Roland N. Karlan	2614	2621		

EXHIBIT INDEX

Defendants	Identification	In Evidence
Z		2621

Trinity Episcopal School Corp.,
et al

vs. 71 Civ. 4315

George Romney, et al.

New York, New York.
May 10, 1974 - 9:00 A.M.

(Trial resumed.)

THE COURT: Let's proceed, gentlemen.

MR. LAND: Your Honor, a minor matter of housekeeping.

Yesterday we indicated we would not call Mr. John Maylott. However, I do feel it would be very helpful to have him called notwithstanding our efforts to stipulate to what his testimony would be. If he does come to the stand, it will be a short direct examination. We do have some problems also as to the various Congressional representatives we mentioned.

THE COURT: Be good enough to think about that over the weekend and when you arrive at a positive conclusion announce it.

I know you will be doing your best and I will go along with whatever can be arranged.

MR. LAND: Thank you, Judge.

MR. GOLD: Your Honoe, one item. With reference to the evening session on Thursday, it did not occur to me at the time that you told us about the schedule but it did later on. My daughter is playing at Carnegie Hall Thursday night.

THE COURT: That is the most vital engagement and I would be out of my mind not to honor it.

MR. GOLD: Thank you, your Honor.

THE COURT: You go. I hope it turns out to be an outstanding event in your life.

MR. GOLD: Thank you. Is the schedule going to remain the same?

THE COURT: No, I will change it. I will let you know what other evening we will switch to.

MR. MORRIS: May I point out to the Court Monday evening I am chairman of the City Bar Association Committee on Urban Development. That is the last meeting of the year.

THE COURT: I have nothing for Monday evening. You thought I might?

MR. MORRIS: Yes.

THE COURT: Don't you worry about it. I already have another commitment, so Monday evening is out. The best I can do is possibly put it down , gentlemen, for

Tuesday.

MR. MORRIS: Tuesday would create a problem for me, too. Wednesday would not.

THE COURT: How vital is the problem? I am squeezing an awful lot of time out of my own schedule and that is not, as the record will show, my fault. It has been a miscalculation on your part and I am trying very hard to accommodate. Don't tie me down too hard. I recognize an excuse like Mr. Gold's, but unless this is vital --

MR. MORRIS: Wednesday would be all right.

THE COURT: I can't do it Wednesday. I would do it Wednesday if I could.

MR. MORRIS: If you will set it for Tuesday I will cancel.

THE COURT: I will let you know as early as I can. Mr. Gold said please change it. I will change it. I can't tell you for certain it will be Tuesday. I will let you know as fast as I can.

What else can we do?

MR. MORRIS: Mr. Gaynor.

THE COURT: Let's proceed.

WILLIAM GAYNOR, called as a witness by the plaintiffs, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. MORRIS:

Q Mr. Gaynor, what is your occupation?

A I am a financial advisor.

Q Would you tell us what your educational background is?

A I am a graduate of Rensselaer Polytechnic Institute, undergraduate and a graduate in the graduate school Rensselaer Polytechnic School, Troy, New York.

I hold a BAchelor of Science and a Master of Business Administration.

Q Were you trained in engineering in connection with your schooling?

A Yes. I am a management engineer by profession.

Q When did you graduate from Rensselaer?

A 1930, and graduate school 1935.

Q What did you do subsequent to that?

A 1935 to 1941, I was State Director upstate New York in the Works Program Administration. I served in World War II until 1946.

In 1946 to 1947, I served with H.A. Hopf & Company, management engineers, New York City and Ossining, New York.

1947 I joined the New York City Housing Authority and served there successively as Director of Management and Executive Director.

Q Is that servic- with the New York City Housing Authority the same New York City Housing Authority that is involved in this proceeding in connection with the public housing that is built in this area?

A Yes.

Q You testified that you were the executive director of that agency.

A Yes.

Q For how long a period were you executive director?

A Approximately seven to eight months. I am not certain because in 1950 I was recalled to active duty with the Corps of Engineers and served there from 1950 to 1952. My best recollection was that it was slightly less than a year I served as executive director.

Q That meant you had charge of all the operations of the New York City Housing Authority during that period, is that correct?

A Subject of course to the chairman. At that time there was the innovation of the first paid chairman of the Authority, so he was the top administrative officer and the executive officer was the chief executive officer.

Q In other words, you were chief executive officer for the New York City Housing Authority during the period you just described?

A Yes.

THE COURT: And for what period of time would that be that you so acted?

THE WITNESS: It would be, your Honor, from late 1946 to September of 1947, at which time I left on military leave.

Q In 1947?

A Yes.

Q How long were you in service?

A I am sorry. I am wrong.

THE WITNESS: Your Honor, that should have been from the latter part of 1949 --

THE COURT: What should have been?

THE WITNESS: My service as executive director

of the New York City Housing Authority. It was from the latter part of 1949 to September of 1950, when I was called to active duty.

Q During the time did you have active supervision of the development of housing projects in the City of New York?

A During the time I was executive direct and director?

Q Yes.

A Yes.

Q Was that limited to the City of New York itself?

A Yes.

Q Was that limited to the development of public housing projects in the City of New York?

A Yes.

Q Did it include as well the development of public housing, the management and operation of existing public housing?

A Yes.

Q You had supervision of all those facets of the operations of the New York City Housing Authority, is that correct?

A Yes.

Q How long were you in service in 1950?

A From 1950 to 1952

Q Where did you serve?

A I served in Alabama at Fort Rucker, and I served in Washington with the Defense Production Administration and the Atomic Energy Commission.

Q Were you with the United States Army Corps of Engineers?

A I was detailed to the DPA, Defense Production Administration, and the AEC, the Atomic Energy Commission, by the Corps of Engineers.

Q What ran kdid you hold in theArmy?

A Lieutenant Colonel.

Q When did you leave the service and what did you do after that?

A I left in 1952 and served with the firm called ARO, ARO Incorporated, which had the contract for the operation of the Arnold Engineering Development Center in Tullahoma, Tennessee. This would be called a wind tunnel testing service but it was far more sophisticated. It was what we call gas dynamics high-testing of aircraft and air space components.

Q How long were you so occupied?

A I was there from the middle of 1952 until the end of 1954.

Q Where did you go then?

A I went to Denver, Colorado.

Q What did you do there?

A I set up my own business as a management consultant.

Q How long was that?

A I stayed there until I was recalled in January of 1959 when I came back to New York to serve as the Commissioner of Housing.

Q Is that Commissioner of Housing and Community Renewal of the State of New York?

A Yes. In 1959 it was the Division of Housing. The name subsequently was changed because in the '58 election and in 1959 there was made available for the first time moneys in Urban Renewal assistance under Title I, and therefore we subsequently changed thename to add Community Renewal to Housing.

Q Is part of your Urban Renewal assistance rendered to theWest Side area of New York City, the subject matter of this litigation?

A Yes.

Q You took office in 1959. Was that under the Rockefeller administration?

A Yes.

Q How long did you serve in that capacity?

A Almost exactly ten years. I left in January, 1969.

Q Would you tell us what activities you engaged in as Commissioner of Housing of the State of New York?

A We had a responsibility for the financing of public housing. Here we had almost a billion dollars in development funds --

Q Is that a billion dollars or a million?

A A billion dollars. My recollection is 960 million. We had annual subsidy funds which would permit a subsidy to take care, to cover, the interest costs of this financing which in turn would be reflected by the local housing authority in a reduced rent, somewhat similar to but not exactly parallel to the Federal formula where a contract is given for the subsidy payments.

In this case our subsidy payments would cover the interest.

Q Would you describe to the Court what various activities the Commissioner of Housing of the State of New York conducted as they would relate to a situation such as the West Side Urban Renewal area?

A First, in the West Side Urban Renewal area we would agree with the City agency concerned, and the City

agency concerned has changed considerably, as I am certain has been documented, it was at one time the Slum Clearance Committee, and it then became the Urban Renewal Board, and then it became the Housing Redevelopment Board, and then it became the Housing Development agency or Administration.

I first became aware of the West Side Urban Renewal project through James Felt, who was the responsible City official for the initial planning and hopefully initial development of this project.

With him I explored it to considerable detail because it was probably the most ambitious urban renewal project that I had encountered. In other words, 20 square blocks to be the subject of conservation, this being Central Park West area primarily, and, of course, some of the existing brownstones, rehabilitation primarily of the brownstones, and redevelopment.

It was a conservation to retain what was good so it didn't slip into any further problems -- the problem of rehabilitation to restore it to where it should be and in redevelopment to clear the site and create new developments.

Q Did the State Division of Housing participate in any way financially and as part of the planning process of the West Side Urban Renewal area?

A Yes. We agreed, and I believe that the first constructive project in the area was Rabbi Stephen Wise's house.

Q Before that, doesn't the State make a contribution financially to the cost of the urban renewal plan?

A Yes. We would contract with the City to pay one-half of the City's costs of the net project costs. The net project costs represented the difference between what the acquisition -- demolition cost would be, the gross costs, and what the site could be disposed of, being of course a lower figure. The difference between those figures, we would term the net project costs and the State, under its urban renewal participation, would take one-half of the City's share which, in turn, became 1/6 of the net project cost inasmuch as the Federal Government would take two-thirds and the City was to take the remaining third. We shared that third with the City, not only of New York but the other cities throughout the State.

Q Did you also participate with the City in the planning of the project in connection with your contribution that you have just described?

A The planning of the project in the main, under the Urban Renewal program in this planning, the State's participation would be of concern with respect to how the

program would accommodate some of the very basic requirements in urban renewal and probably one of the basic requirements was that of relocation of existing site occupants, how they were to be handled.

The prime responsibility however rests with the local agency, the municipal agency, not with the State of New York.

Ours is a broad, or was a broad planning responsibility to see that certain aspects of it were carried out in accordance with what we thought were the proper guidelines.

Q Did you also participate in connection with the planning of public housing to go into the area?

A Yes. And I believe that Rabbi Wise' house was the first development in the West Side area, although I am not too certain of this, but it was to that extent that we financed State-aided housing for some 399 dwelling units.

Q In other words, the financing of StephenWise' house was done under the aegis of the organization of which you were the Commissioner, is that correct?

A Planning responsibility would rest with the City Housing Authority. The plans however would be subject to the approval of the State Division of Housing.

THE COURT: That is where you came in?

THE WITNESS: Yes, sir.

Q Your agency made the funds available to the City Housing Authority for the construction of that project?

A The construction, and of course we enabled the City to bring about rentals at public housing levels due to our State subsidy on an annual basis. This is an annual basis for 50 years.

Q Did you also participate in the financing of some of the Mitchell-Lama projects that were developed in the West Side Urban Renewal area?

A Originally we had agreed to participate in a number of those projects. These are the limited profit housing company developments. We did finance one of the first limited profit housing projects. It was completed.

Q Is that Sites 1, 2 and 3?

A Sites 1, 2 and 3. This was, I believe, one of the first of the limited profit projects although I am not certain as to the timing. This we did complete.

Q This was done under the supervision of the agency of which you were Commissioner?

A That's right.

Q Did you also participate in connection with the programs calling for subsidies to permit rents to be brought down to a level where low income families could occupy the

properties?

A Yes.

Q Tell us about that.

A We were able, through legislation, in 1965, to bring about a pioneer program -- I believe it may not even be matched by any other statement -- called a Capital Grant Low Rent Assistance Program, where we received a capital grant by the legislature which enabled us to put a number of low income families into middle income housing by subsidizing the difference between a public housing rent and the existing economic rent in the middle income housing development.

Q Is that known as the capital grant program of which we have had considerable discussion in this proceeding?

A Yes. It is called the capital grant low rent assistance program.

Q In connection with the financing of Mitchell-Lamas, was there also a development under your aegis of the housing finance agency?

A The housing finance agency was created in 1960.

Q While you were the Commissioner?

A I was the Commissioner of Housing and had considerable responsibility for the development of that particular agency.

Q Would you tell the Court what the function of that agency was?

A The function of the agency initially, when it was created in 1960, was to finance, through the sale of revenue bonds, the construction of limited profit housing.

I have to emphasize here that it was through revenue bonds because if the full faith and credit of the State were involved, as it was with the initial Mitchell-Lama funds which the State received, it would require approval by the electorate in a general referendum.

Q In a referendum?

A Yes, and having participated in sufficient of those referenda it became obvious that the public would not approve the general referendum at an election, would not approve anything that was connected with housing.

Q Were the housing finance agency funds that you described used for the financing of the Mitchell-Lamas that were built in the West Side Urban Renewal area?

A Yes. When it was built on Sites 1, 2 and 3, and of course, it will be used on any that will be built.

I might say that in my experience in the West Side Urban Renewal project that the City of New York through its responsible agency seemed to retract from the proffers of the State for the financing of its housing and

rather to undertake to finance through its own Mithcell-Lama program. There are parallel programs, I am sure you know, of both the City and State, so that if the City wishes, and the City did, it could do the same as the State does.

So that the Housing Finance Agency did not participate to the extent at first we had agreed, and in another area neither did the division in its public housing because we were not asked to finance any additional State-aided public housing.

Q Was the Trinity School when it was set up originally slated for financing under the State program?

A We initially --

THE COURT: Just a minute. There are occasions when I will let you explain, but some of these questions must be answered yes or no, without adding on too much explanation.

The answer is yes?

THE WITNESS: Yes.

MR. GOLD: Your Honor, there is an objection to the question relating to Trinity School. There is no evidence here that it is financed by any Government subsidy.

THE COURT: I will strike it if it is not made clear. The objection will at this time be overruled.

Please fill it in.

MR. MORRIS: Your Honor, the record is very clear as to Trinity School --

THE COURT: As to this man, Mr.Gaynor.

MR. MORRIS: It was financed by the City for a City Mitchell-Lama project.

THE COURT: Is that right?

THE WITNESS: Yes, sir.

Q Did there come a time when after the Trinity School pboject was processed through State the City decided totake it over and the City then went ahead and financed the project?

A Yes.

Q Was there also a program in connection with the loans which were available for co-op purchasers in the West Side Urban Renewal area?

A Yes.

Q Was that a program that was developed under the State Division of Housing while you were the Commissioner?

A Yes,sir.

Q Isn't it true that at the present time there are arrangements being made for the financing of additional projects in the West Side Urban Renewal area by the State Division of Housing?

A Yes.

Q At the present time?

A Yes.

Q And I refer specifically to Sites 41 and 44.

A Yes, sir.

Q So that the State Division of Housing is now back in the operation of the West Side Urban Renewal area, is that right?

A That is my understanding. I am no longer with the State Division of Housing, but my understanding is that the State has been invited to develop those projects.

Q The Housing Finance Agency you have just described, was this a pioneering project? Was that the first agency of its type in the country?

A Yes, sir.

Q Has it been developed in States all over the country now following the pattern of what was developed under your aegis?

A My last count was somewhere between 25 and 30 States.

Q Have adopted that concept?

A Yes.

Q Which was developed while you were the Commissioner of State Housing?

A Yes.

If I might digress --

THE COURT: I am afraid not. You have to answer the questions.

Q Does the Housing Finance Agency also finance other programs in addition to housing?

A Yes.

Q Can you give us some idea of the magnitude of the financing of the Housing Finance Agency in dollars?

THE COURT: Now you can do a little more than just one or two words.

A The Housing Finance Agency successively was given responsibility for the financing, for the State University construction fund, for the mental hygiene facilities improvement fund, and which name was later changed to Health and Mental Health Hygiene Fund, and then with the Department of Health of the State of New York was given responsibility for financing nursing homes and extended care facilities, and since then has received other expanded responsibilities.

Q And what would you say is the dollar amount of the financing that has become available through that agency which was created while you were the Commissioner? Would it be about $5 billion?

A It would be about $5.5 billion. There is an open end item in the State University construction fund. There was not limitation there, so that could be whatever was required for the State University construction program.

Q In the course of your duties with the State Division of Housing, while you were the Commissioner, did you maintain contact with the West Side Urban Renewal area and what was happening with respect to it?

A Yes, we did. From both our urban renewal division and from our management division, which was concerned with the operation of the public and the middle income housing, we were able to maintain continuing association with the West Side area.

My interest, we had at that time scores of urban renewal projects throughout New York City and throughout the State of New York, so that the West Side Urban Renewal project was not exclusively a concern of ours.

Q But it was one of the concerns?

A It was one of the concerns. As I said earlier,

it was really ambitious, 20 square blocks, and, occupying the sites that it did in the Borough of Manhattan, it also occupied quite a bit of our time. My concern in the West Side project, as expressed to the City officials, was that the delay was unfortunately affecting the success of the project and the earlier concepts which had been responsible for the development of the project.

Q Did there come a time when you served as chairman of the task force on Housing and Urban Renewal for the Federal Government?

A Yes, we did that -- I was the chairman of a national committee which had as its charge to advise the president-elect of a program with respect to housing and urban renewal.

Q And how long did you serve as chairman of that unit?

A Until we completed our activities, which was throughout the month of December and just prior to the inauguration in January of 1969.

Q Did that call for a nation-wide survey in the field?

A Yes. We basically had recommended to the president that the National Housing Act of 1968 was so comprehensive that nothing new was needed but rather efforts should

be made to develop those elements of it which could bring about some early action.

We had a concern then for model cities and these other elements of the national project, national program.

We had recommended that the then to be appointed or the designate for the Secretary of Housing and Urban Development shake out the loose elements of that program of 1968 and press forward with those that could be more readily accomplished.

It is with deepest regret I say the funds have not been made available. The programs have floundered. In the case of housing and urban renewal, the major ingredient always is money and the money just simply has not been made available.

Q Did you also serve at one time as an adjunct professor of urban planning at Columbia University?

A I served at Columbia from 1959 to 1960 as adjunct professor.

Q And did you give courses in housing at that time?

A Yes, I did, housing and planning.

Q Mr. Gaynor, did you at my request, for the purpose of this litigation, make an analysis of the West Side Urban Renewal plan with a view to furnishing testimony to the Court in this proceeding?

A Yes, I did.

Q Would you tell us what you did with respect to that assignment?

THE COURT: First tell me what was your own objective. You wanted to do what when you first went about it, in a general way. Don't give me the details. In a general way, what were you endeavoring to do?

THE WITNESS: To determine the conditions and the programs in the project area and to determine if those conditions and those programs were affecting considerable change in at least the original if not the subsequent concepts of that particular project development, the project area development.

Q Did you proceed with a study of the area with that in mind?

A Yes, I did.

Q Would you tell us the area covered by the West Side Urban Renewal area project?

A From 86th to 96th Streets, from Central Park West to Amsterdam.

Q 87th, isn't it?

A Yes.

Q To 97th?

A 97th.

Q Central Park West and AmsterdamAvenue?

A Yes.

Q Now, would you describe the general area in which this project is located?

A Physically?

Q Well, what part of the City is it located in?

A In one of the more --

THE COURT: Do we need him for that, what part of the City is it located in? We all know. The Court has taken judicial notice of it and there has been proof already.

Q Did you make a study of the area itself as well as the perimeter and surrounding area of the project?

A The study involved --

THE COURT: Did you?

THE WITNESS: Yes.

THE COURT: Let's go on.

Q Now, would you tell us what the study involved and what you turned up with respect to the early phases of the development of the project from the time it was first instituted up to the time it was approved by the Board of Estimate in 1962?

A Initially the project was considered a re-development which probably even at that time could not be considered as being entirely feasible because it didn't

contemplate any public housing. It contemplated the restoration of that area to the tax rolls whereby there would be an increased tax return as a result of this redevelopment. And this gradually was changed to reduce the preponderance of conventional housing --

Q You mean fully tax-paying housing?

A Fully tax-paying housing. -- at the expense of middle income housing and some public housing.

Q Would you describe the area of the West Side Urban Renewal project and its perimeter and surrounding area at the time the urban renewal project was being planned?

A The area to the north west already the subject of a Title I development, large scale, Park Village, over 2000 units -- almost 2000 units, and the area along Central Park West was fairly substantial and standard. However, to the west there was gradual deterioration at the time and the concern of the agency that had proposed it was that the entire population of the area was changing in that substantially white tenants, occupants, were moving out of the area and there was an inward migration of black and Puerto Rican tenants.

Q Would you say they were low income families?

A Yes, they were, in the main.

Q What was the concept of the urban renewal plan

with respect to that situation that you just described?

A The concept initially was that they were going to restore it to a taxpaying basis but they didn't have too much consideration for what would happen to the low income families that were already in there and, as a result, they changed the mix, if you will, the housing mix, to --

MR. DOUW: Your Honor, could we have more clarification as to dates and who the people are who were involved when he says "they"?

THE COURT: Yes, that I assume will be brought out. It can't all be done at one time.

Go on, sir.

Mr. Morris, you see that the details are supplied.

MR. MORRIS: Yes.

THE COURT: Go ahead.

THE WITNESS: Would you repeat the question?

Q You were at the point of telling us that the concept was changed to include more low income housing. Would you tell us what occurred with respect to that?

A The low income housing was necessary in order to take care of the original site occupants, the site occupants having a priority for location in the redevelopment project as eligible, and, of course, many of them could not be eligible for fully tax-paying housing and many of

them could not be eligible for limited profit housing. So the concept was changed in 1962 to include accommodations for low income families.

Q How many low income families was it decided upon to include in the project?

A In the statement of the Housing Redevelopment Board in May of 1962, they included 800 new low rent public housing projects, 200 rehabilitated public housing projects and 630 limited profit housing at public housing rents, at that time a total of 1630 units.

Q Was there a subsequent change with respect to the number of low income units?

A Yes, there was a revision.

Q And when did that occur?

A By the same HRB, Housing Redevelopment Board, in October of 1962, when they reported 795 public housing units, new construction, 480 public housing rehabilitated units, and 210 public housing at Public School 93 site and 980 limited profit housing, a total of 2465 units.

The chairman of the HRB and the administrator of HDA in September 1966, reported in a statement that there will be 1453 conventional public housing units and 1160 middle income units for low income, a total of 2559 units.

Q During that period, would you describe to the Court what occurred with respect to the development and consummation of the plan.

MR. LAND: I have a question, your Honor. Excuse me, Mr. Morris.

Did you give a date as to when the increase of the 2559 low income units?

THE WITNESS: A statement by the chairman of the HRB on September 9, 1966.

MR. LAND: Thank you. You may go on, Mr. Morris.

MR. MORRIS: May we have the stenographer read the question?

THE COURT: Read Mr. Morris' pending question, please.

(Question read.)

A There seemed to be an agreement by City Housing officials, the urban renewal area, that there was a commitment to produce 2500 low income dwelling units, and this has been repeated by Mr. Nathan, the then administrator, in various statements. I could look those statements up but it is a matter of the record that Mr. Nathan had said there will be 2500 units provided.

Q Those are in evidence in this proceeding,

Commissioner, so that we know about them.

Would you describe to the Court what was happening with respect to the consummation of the plan during this period from 1962 up to the period that you are describing, 1966 and '67 and '68?

A The plan initially, that is, the development itself, seemed to be progresssing quite satisfactorily but slowly. Again, it is not an easy process to redevelop an area because of the very obvious problems of relocation. You have to clear the site and you have got to relocate the tenants as you clear the site.

The developments in the northern end, northern section, of the project seemed to give it a strength, in other words, it was a solid development. Then as the plans began to be revised and changes were made and these changes came about through the availability, in addition to the State's capital grant program,of certain programs of the Federal Government which would permit of leasing by the Public Housing Authority and would also permit a reduction in rents through a subsidy formula which established a floor for the financing costs, one time 3 per cent, later reduced to 1 per cent, with a subsidy between that floor and whatever the rate was for the particular financing.

Q From your knowledge of the area during this period

while you were the Commissioner and in charge of the supervision of what was going on, would you say that the concepts of the Urban Renewal plan were being accomplished and there was an upgrading of the area?

A Yes.

Q I speak up to the period of 1969.

Did you say yes?

MR. DOUW: Your Honor, I object to the leading nature of the question.

MR. MORRIS: Your Honor, this is an expert witness.

THE COURT: I know, but he is supposed to testify. What would you say, would be a better way to put it. Then you can avoid the accusation of leading a witness.

What would you say in that regard, Commissioner, up to '69?

THE WITNESS: I left in '69, so -- I left the State Division of Housing in 1969.

THE COURT: Up to the time you left, what would you say?

THE WITNESS: I would say that prior to that, from possibly 1966 to 1969, I became increasingly concerned with the way the City Administration was progressing. They did not seem to be progressing in the redevelopment aspects

of this project and there seemed to be many, many changes. I had talked to and had been visited by --

THE COURT: No, please. You are giving conclusions. What are you referring to? Give me some of the details that caused you to think along those lines. What was it that you found the City was not doing that you expected it would do? Tell me these things in detail. What are the facts rather than your own conclusions?

THE WITNESS: It was not taking advantage of the financial assistance the State could give.

THE COURT: What else?

THE WITNESS: It was in a state of change with respect to the housing mix as to what would be conventional housing, what would be middle income housing and what would be low income housing.

THE COURT: Very well. And what else?

THE WITNESS: A general dissatisfaction at that time within at least some of the area groups with the progress which was conveyed to me by that group and, unfortunately I could not be of considerable assistance because the City could not -- would not avail itself of our ability to finance both public housing and middle income housing. So these are the concerns that I had.

THE COURT: That answers that particular question.

Q Mr. Gaynor, did you observe the actual physical processes and what was occuring physically in the area up to that period of 1969-1970?

THE COURT: He says he left in 1969.

MR. MORRIS: 1969.

Q Did you familiarize yourself and keep contact with the area after you left the State Division?

A I went there in 1972. I had visited and driven through, but in 1972 I visited in some depth.

Q Would you tell the Court what your observations were of the physical situation that had occurred in the area beginning with 1962 up to the period that you left in 1969? Were there physical evidences of compliance with the plan?

A Yes.

Q Tell us about them. That is what we want to know about.

A The redevelopments were completed. There were new high rise buildings, there was rehabilitation completed, the conservation efforts seemed to have been successful.

The area seemed to me to be on a rise.

Q In other words, your analysis of the project during that period was that there was compliance with the terms of the Urban Renewal plan?

A Yes.

Q All right. Did there occur a change in that situation after you left as Commissioner of Housing?

A Yes.

Q Would you tell the Court what that change was and what that consisted of?

A The change came about through the use of public housing leasing which permited the Housing Authority to lease units in the middle income housing developments, an agreement that 30 per cent of the middle income housing units would be made available to low income families, but more importantly an acceptance by the Department of Social Services that the middle income rentals fell within the acceptable standards for welfare recipients, and that in a case of at least two and I believe subsequently another, a total of three, of the middle income projects were tenanted not only by the 30 per cent low income families which was agreed, but the remaining 70 per cent, some 70 per cent of those, or a grand total of almost 80 per cent of the total units were occupied by persons of low income.

I am saying this because a welfare recipient usually can be termed a person of low income.

Q What effect did that have --

THE COURT: I am sorry. That is really the hub, the nucleus of this case, and you have not given it the

full treatment that you have to other issues which are not as important. So will you please tell me whether you have said everything you have to say on that score?

THE WITNESS: The very concept of the capital grant program to bring about economic and social integration was to permit low income families to dwell in middle income housing units but it was never intended that the low income families should dominate the occupancy of the middle income housing units. This was not the concept and in my opinion is not the proper concept of integrating middle income housing.

That, your Honor, would be my objection to what was done in the tenant selection procedure that was followed.

THE COURT: That is what I want you to develop as much as you can in detail.

In what way was that concept offended? There it is. You say we started out with a goal. YOu have announced it more than once in your testimony. Then you say "along came this change," and you depict it as a radical change, an upset. I get from you the notion that there was almost a defeat of the initial objective, but that doesn't tell me much. That is a conclusion. On what do you predicate the change?

THE WITNESS: From conversations with

people in the area, with the manager of the housing projects and based on my own tour of two of those housing projects.

THE COURT: Tell me what you saw.

THE WITNESS: I saw a general downgrading of a relatively new housing development. I saw what I would regard as not so much poor maintenance on the part of the staff but possibly poor appreciation on the part of the tenants of the housing opportunities that had been made available to them. And I say this, your Honor, not so much to criticize the possibility of 80 per cent low income families.

I say this in that the impact on the 20 per cent middle income families would be devastating. The 20 per cent middle income families do have mobility. Unfortunately, many of the low income families do not. In my exposure, I would expect many of the middle income families to exercise their right and move.

MR.DOUW: Your Honor, respectfully I move to strike the previous testimony on the ground he is not qualified to give testimony in that regard.

MR. MORRIS: I respectfully submit this witness is an expert and has been qualified as a housing expert and is in a position to give an expert opinion which is precisely what he has just done.

THE COURT: The motion is denied, but I would point out now that there is something we have got to clear away, Mr. Gaynor.

You are so full, evidently, of the subject that you do not realize that you are really turning that examination into a dissertation which is really not testimony.

What I am asking you to do is to concentrate on the question and do not go from a factual recital and then suddenly launch into a conclusion which your expertise you believe warrants you in saying.

I asked you what, Commissioner, was happening, what was the change, what happened. You can talk about a man of wealth and you suddenly say he is poor. That is a conclusion. But if you point out he is now in rags as distinguished from his well-dressed appearance, the fine apartment he formerly enjoyed and now he is in the Bowery, those are facts.

What are the facts? That is what I want. I am a fact finder.

Now will you please enlighten me? Give me the facts that you observed with your eyes and the information that was brought to your attention that makes you saw there was a change and it took the flooring away from the original concept.

That is what you told me. What do you base it on?

THE WITNESS: The conversations with the occupants who were deeply concerned that there had been --

MR. LAND: Objection. This is hearsay.

THE COURT: There is authority for this proposition and I will receive it subject to a motion to strike.

When you go into a neighborhood situation, says the authorities, as we interpret them, the fact finder in the absence of a jury is allowed to take this kind of material if the fact finder looks upon the witness as trustworthy, as not given to flights of unfounded assertion. If at this juncture he seems to have made something of an impression on the fact finder, we are allowed to take it, what the neighbors said as to a general condition, according to the authorities. If, however, by the time we get through we find it is limp and not solid, that totality of it is woefully insufficient, then you always have the remarkable weapon of a motion to strike and the annihilation of the testimony.

MR. MORRIS: Your Honor, may I make an observation?

THE COURT: If it is a good one.

MR. MORRIS: I think it is important to under-

stand, and I think counsel are confusing the purpose of calling this witness. This witness has not been called because he is a resident of the area or because he lives there or because he is a participant in the sense that he made an investment in the area.

He is called as an expert, a technician in the field of housing, who has great familiarity with this particular project and who was retained by my client to make an analysis in terms of his expertise of the situation with respect to this area and what has occurred to it.

Therefore, to object to a statement by him that he concluded certain things as being hearsay is a perfectly unfounded objection and has no relationship to expert testimony.

THE COURT: No, the Court has found occasion to differ with counsel and that is true of almost all litigation, but certainly they are possessed of that degree of knowledge and professionalism that your comments just now, Mr. Morris, are entirely out of order. They know who you called. They know full well that he is not a resident, etc. Their objection is that as you go about your undertaking you are allowing this witness to bring into the reoord hearsay. They say, "Judge, we are ready to listen to facts which the law approves, but we are going to

watch every step of the way the admissibility of evidence."

We don't want it to go in unless the law says it can go in, and they quarrel with the Court's ruling that this witness should be allowed to tell us what neighbors told him. That is an entirely different matter.

I am going to overrule the objection at this time, Mr. Morris, and let you go forward, and I am going to dismiss that from now on until you ask for opinion by the witness, I want an answer to the questions that are bothering me, the fact finder. I want to be satisfied. I want to know which way to travel.

Therefore, I want his answers. I still haven't got the complete answer. He was about to tell me about his conversation with the neighbors and then there was, and properly so, an objection and I have overruled the objection for the time being.

All right. Now let's go ahead.

Go ahead, Mr.Gaynor. You talked to neighbors. Yes?

THE WITNESS: I talked to neighbors who had come into the project, in the pilot, the brownstone sale and rehabilitation program. They came in there in what they felt was good faith.

MR. LAND: If I may, if we are going to allow

this hearsay, may we have what they told him and he told them?

THE COURT: There it is a conclusion. What did they tell you?

THE WITNESS: That the project area which could be integrated, integrated both socially and economically, and initially this probably was the circumstance, but that at the time of my conversations in 1972 the concept of the program had been changed remarkably and obviously in that the very goal of the integrated community was becoming less and less apparent.

THE COURT: That is a conclusion.

Based on what. What did they say?

THE WITNESS: The fact that there was an influx of low income families into the area beyond which they had at least contemplated would be the case.

THE COURT: That is telling me something. What else?

THE WITNESS: The attendant problems of street crime, their problems of security and in visiting some of these rehabilitated brownstones I did note --

THE COURT: Don't switch to something else.

THE WITNESS: Requirements for security.

THE COURT: That is what these neighbors told

you?

THE WITNESS: Yes.

THE COURT: About how many people did you talk to?

THE WITNESS: Five.

THE COURT: Where, what area? Do you remember?

THE WITNESS: It was in the middle section in a rehabilitated area. Wherever Dr. Jerome Fine would have his rehab. One of his neighbors. The exact location, your Honor, I don't know.

THE COURT: At any rate it was the neighborhood of Dr. Fine's brownstone, is that what you mean to say?

THE WITNESS: Yes, sir.

THE COURT: What else do you wish to call to my attention that you observed? You are a technician. You looked. What did you see that you believe you wish to call to my attention as in conflict with the original plan that you have expounded upon?

THE WITNESS: In the original plan it was reported that there were problems with the school curriculum, educational problems, because of the change in the mix, that is, in the ethnic mix or racial mix, in the area, and this had occasioned --

MR. LAND: Your Honor, the testimony is

original plan reported problems. I think on this type of testimony we should see the original plans rather than getting a characterization.

THE COURT: What you are about to tell me, does that relate to the changes you observed in 1972?

THE WITNESS: I would say in '72 they had not corrected the problems they reported initially, that there was a drastic overcrowding of the residential units and severe enrollment problems in the public schools. The public schools,as best I could observe, and I could not necessarily attend the classes, but in walking through Public School 84 and Joan of Arc, it was quite apparent to me that integration had not succeeded.

THE COURT: That is fact. Don't you see the difference?

THE WITNESS: Yes, sir.

THE COURT: Develop that. What did you observe?

THE WITNESS: I observed that there were very few white students, in my opinion, relative to the number, which I would assume might be Puerto Rican or black.

THE COURT: What else did you observe?

THE WITNESS: The conditions still seemed to me to be crowded. The discipline, again as I had seen in the housing projects, seemed to be rather lax in the school.

THE COURT: In the school?

THE WITNESS: In the school. I saw the loitering, litter and to an extent the same disregard of the educational facilities as I saw in the residential facilities.

THE COURT: That is a conclusion. Disregard in what respect?

THE WITNESS: Graffiti, litter and loitering.

THE COURT: Yes?

THE WITNESS: That's it.

THE COURT: What else?

MR. GOLD: Your Honor --

THE COURT: Hold it for cross-examination and then you can move to strike. Unless I am choking off something vital.

Will you content yourself with the Court's suggestion?

MR. GOLD: Yes.

THE COURT: Thank you. Now go ahead. What other changes did you observe in this whole area that caused you to testify that there was an outstanding change for the worse?

THE WITNESS: This would have to be general, your Honor, because the commercial units along Columbus Avenue -- this was to be the spine of this project area,

this was the one that was to be the show place. Now, this has to be only on observation. My conclusion was that it was far from a show place although there were commercial establishments that were a credit to the neighborhood, it wasn't necessarily universally so.

THE COURT: That is telling me something. You found some commercial establishments that met with your approval, that were consistent with the ideal envisioned, but you say there were areas that did not live up to it. That is a conclusion. You have to tell me about what areas, about where they were located, how extensive they were. That is the sort of thing that I must know.

THE WITNESS: The areas on the northern end of the project seemed to me to be solid and well-developed. As I proceeded southward along Columbus Avenue, in many instances it starts to deteriorate in the type of establishment that was created.

I am not questioning the ownership or management of the establishment. There seemed to be a subtle, if you will, downgrading, and then, as you approached the southern end unfortunately in the absence of redevelopment it becomes a very substandard area.

THE COURT: Would you say shabby?

THE WITNESS: Yes. It is a slum. In the old

days they called it a slum . Yes, it is a substandard area.

Q Would you define for the Court approximately what area, what streets those were that you so characterized?

A I would have to have the map, Mr. Morris, which I don't have.

Q Was it the area south of 90th Street, would you say?

A Yes.

Q South of 90th?

A Yes.

Q Did you also make an analysis of the figures of low income families that were introduced into the area from the various documents that I submitted to you?

A Yes.

Q And would you tell us what that analysis showed?

MR. LAND: Your Honor, since Mr. Morris says he submitted figures to the witness, I would like to have an opportunity to see those figures.

THE COURT: You certainly are entitled to them.

MR. MORRIS: Your Honor, the figures to which I refer are all exhibits in evidence in this proceeding.

THE COURT: You turned over to him a series of exhibits?

MR. MORRIS: Yes.

THE COURT: Would you give us that list of exhibits you turned over?

MR. MORRIS: Mainly the exhibits we stipulated to. I think it is Defendants' Exhibit S and the summation of the figures -- the addendum to the City's West Side Urban Renewal area occupied sites redevelopment sites, which was the exhibit that I prepared.

MR. GOLD: Your Honor, the addendum I don't believe is in evidence at the moment.

MR. MORRIS: You were going to check the conclusions. Did you check them?

MR. GOLD: I am not ready to answer that at the moment. I am just saying that addendum is not in evidence.

THE COURT: Suppose we take this and if it is not connected up you can move to strike. That is a common tactic in trials. Otherwise we will extend the time that we already are having trouble with because we are crowded with this matter and we want to fit it in.

You have given us an answer, Mr. Morris. You turned over those exhibits which you identified to this witness. Now what is your question?

Q Did you analyze those figures in terms of what has happened to the area in contrast to what had been

planned originally?

THE COURT: Did you do so, Mr.Gaynor?

Q Yes or no.

A Yes, I have.

Q Would you tell the Court what your analysis revealed of that situation?

A That the revised program for low income dwelling units of 2500 which had been repeated by the HDA administrator had been exceeded in the occupied units and the units under construction.

And the exhibit that I have, which is the addendum to City "WSURA Occupied Units Redevelopment Sites" shows 1924 completed low income housing units and 136 under construction and 539 in planning, which would give a total of 2599 units, to which would be added the low income units resulting from the conversion of Site 4 and Site 30 from middle to low income housing of 430 units, with a total of all public housing units of 3029.

But this figure excludes approximately 212 welfare families in middle income units, off site public housing --

MR. DOUW: Your Honor, unless a sufficient foundation is laid for the 212 families, I would object to it.

THE COURT: As I have already indicated, we cannot get it all out in one sentence or in one paragraph. Just preserve your motion and make a motion to strike if there is insufficient evidence to support what the witness has to say.

MR. DOUW: Thank you, your Honor.

THE COURT: Go ahead, sir.

A There was off-site public housing of de Hostos House, 830 Amsterdam Avenue and Douglas Addition, which was a total of 507 dwelling units. These would represent 729 to be added to the 3029, a total of 3758 low income dwelling units.

But it does not include the use of Section 236 financed housing for welfare clients, which was the case in the tenancy of three Section 236 middle income housing developments. So that there are 1952 Section 236 units still to be completed and 80 per cent of that could be added to the 3758, my conclusion being that in the figures as given me it shows out of the estimated 7927 units to be developed, 3758 would be for low income families, which would represent 47 per cent of those projects.

THE COURT: Your conclusions that you just announced were based again on what material?

THE WITNESS: On this schedule furnished me by Mr. Morris which I had understand had been introduced already.

THE COURT: Referring to --

MR. MORRIS: To Defendants' Exhibit S in evidence and Plaintiffs' Exhibit -- I don't have the number.

MR. LAND: The addendum.

THE COURT: Which has not yet been introduced.

MR. GOLD; It was marked for identification.

MR. MORRIS: Mr. Gold is to let me know whether the addition is correct on that.

Q As a result of your analysis of those figures, and as a result of your observations in the area which you personally made and discussions you had with people who were involved, did you come to any conclusion as to what in your opinion is happening with respect to this area and will continue to happen with respect to the area in terms of compliance with the original terms of the urban renewal plan?

MR. LAND: I object.

THE COURT: Objection overruled. I will take it subject to a motion to strike later.

A I believe that there is a profound change that

is possible in the tenancy of this area in that there seems to be a very definite thrust towards occupancy by low income families. The basic reason for this project was to see if it could be restored, and the reason was that the white families were leaving and there was a very decided in-migration of black and Puerto Rican families.

This was the basic reason for the West Side Urban Renewal project, it was the ethnic composition of the area, it had changed. It was the hope originally that it might be restored.

In my opinion, to have at least 47 per cent of the new dwelling units occupied by low income families, may very well portend a trend towards a majority of low income families, and this is not in consistency with the basic concept of urban renewal..

Q Describe for the Court as you anticipate it, what would happen with respect to middle income and upper income families and what would happen with respect to low income families in the area.

A The problem that I anticipate and which I don't believe had been considered in the development of this project is that there are possibly a dozen projects now awaiting redevelopment, awaiting construction.

Now the projects are described rather euphemistic-

ally as State Mitchell-Lama with a hope, I would judge, of a subsidy through Section 236 funds. This would require a sponsor, the developer, be it a co-op or a rental. Either one can get this assistance and the STate can develop either a co-op or a rental.

The sponsor would have to be concerned with the feasibility of this project, the marketability of the apartments, and it has been my experience, and I am sure it is not unique, that where a development is occupied in the main by low income families, middle income families will exercise their right to reject that particular selection and go elsewhere, into a neighborhood that is more to their particular desires.

The concern I have is that if this particular concept is persued it will jeopardize the future of an urban renewal project for which I really had some high regard and still have, provided that there is an understanding on the part of those concerned with this development that this is a problem.

This is a problem of the exercise of judgment by a person who has free will in the purchase of a co-op or the rental of an apartment.

Experience has shown that the exercise of that free will will probably result in the rejection of a unit

or an area that is not integrated socially and economically. That is my concern with what I see as the possible thrust of the present programming of these housing units.

Q Considering your analysis of the figures, your analysis of the area, and your experience, would you say that it is your opinion that this project will become a slum or a ghetto and a deteriorated area?

A It could.

THE WITNESS: If I may, your Honor, it is very difficult to predict basically what human beings will do. I can only say, as I hope I have testified, that middle income families prefer to live with middle income families. They will live with low income families, and this is what we tried to produce back in 1965, but I don't believe that they will if it is predominantly low income families -- and by "low income" I mean not only the economic mix but I also mean the social mix.

THE COURT: Listen again to Mr. Morris' question. Please read it.

I don't expect you to answer with a positive degree. You are wise when you say the power, the strength, the limitations of human beings has always been a puzzle to humanity. We have seen people rise from rot, and we have seen great strength deteriorate almost overnight.

So that is a wise comment to that extent.

But what do you think is a reasonable likelihood to happen if this goes on? Will what Mr. Morris' question indicates take place or not?

THE WITNESS: From what I saw of the two projects where the welfare recipients had been introduced as tenants, that would be 21 and 22, Columbus Manor and Westwood, I did not --

THE COURT: You are pointing out two buildings. He is asking about the whole area. Can you answer the question?

THE WITNESS: Yes, sir.

THE COURT: Please give me the best answer you can give or say no, you can't, or what, but let's get through with it.

THE WITNESS: If those who tenant these projects to be developed follow the same tenant selection as was followed in these two sites I mentioned, I understand three, from my observation those projects are becoming slightly substandard and over a period of years can become substandard, and other developments based upon the same type of tenant selection might also become substandard, and in that case we jeopardize practically the entire urban renewal project.

MR. MORRIS: That is all.

THE COURT: One question before we take a short recess.

It is going to be a simple question. Try to make your answer simple.

If you were in command today of this West Side Urban renewal undertaking, remembering the practicalities, remembering that we can all engage in dreams and practically speaking those dreams are just what they are, dreams, but being practical about it, making allowances according to 1974 standards, what would be the primary direction that you would take in order to prevent the downhill or downgrading that has been indicated by the questions and by your testimony? What would you direct be done. What are 1, 2, 3, 4 and 5 of the major things you would direct?

THE WITNESS: I would insist upon screening standards.

THE COURT: Next. I know what that means. You have already explained that. You might add to the end that --

THE WITNESS: -- that there is a reasonable integration of the tenantcy of these projects to be developed.

THE COURT: In accordance with the initial understanding?

THE WITNESS: Yes.

THE COURT: Yext.

THE WITNESS: I would insist that the maintenance and operation budget be sufficient to accommodate the needs for security which, I believe, your Honor, this is a new element.

THE COURT: I know. You will come to that later.

List the things you would direct.

THE WITNESS: I would certainly in the construction have assigned, as we do in the STate, a construction advisor whose job is to see that that job is done in accordance with the specs and plans and ~~don't~~ done reasonably on time.

THE COURT: What else?

THE WITNESS: That is all.

THE COURT: Those are the major ones?

THE WITNESS: Yes.

THE COURT: Short recess. Ten minutes.

(Recess.)

MR. MORRIS: May I request, your Honor, a little change in the order of witnesses.

Mr. Friedberg, who had direct examination and partly complete cross-examination, was supposed to be here at nine o'clock this morning and was to be the first

witness to complete his cross-examination.

Unfortunately he got lost in the building and went to the wrong courtroom and didn't get her in time. In order not to delay the Court I went ahead with Mr. Gaynor. Mr. Friedberg is here now and I would appreciate leave of the Court to have his cross-examination completed.

THE COURT: All right.

M. P A U L F R I E D B E R G resumed.

THE COURT: Mr. Friedberg, you are continuing your testimony under oath.

THE WITNESS: I do.

THE COURT: Gentlemen, before I forget it, make a note that beginning with Monday's session and for next week we must meet in another courtroom, 519. At least there is some variety in that respect.

CROSS-EXAMINATION (continued)

BY MR. LAND:

Q You testified that it was your understanding that one of the objectives of the urban renewal plan was to accommodate a certain percentage of low income families.

A Yes.

Q Tell us what that percentage of the total units for low income would be.

A At the time that I moved in it was 25 per cent.

Q You understood that to mean that of all housing units within the West Side Renewal area 25 per cent of those units were to be for low income persons?

A Yes.

Q As to that part of the plan you have absolutely no objection?

A No, sir.

Q In fact you encouraged that?

A Yes, sir.

Q Wholeheartedly?

A Yes, sir.

Q Mr. Friedberg, when we concluded your testimony the other day we were discussing the two new projects contemplated by the City of New York on Sites 41 and 44, which are between 87th and 89th Streets facing Columbus Avenue.

A Yes.

Q I understand that you have some input as to the design or plan of one of those buildings.

A One of those buildings, yes.

Q You mentioned you believed there to be substantial input of 236 funds in your testimony.

A It was my understanding.

Q What do you mean by that?

A Well, it is a Government funding program, mortgage

program, which is tailored to provide housing for a specific income level and I don't know the exact range of that income level, but I know that it is generally in the lower range of our economic scale.

Q In other words, it is your understanding as to these two new buildings planned bythe City of New York that some portions of those buildings would be occupied by low income families?

A My understanding was that the 236 money would be mixed with the Mitchell-Lama program and that would facilitate a lower rent range per room, rent level per room.

Q As to these two new buildings and consistent with your conception of the plan with respect to the units for low income persons, it would be your hope that as to these two buildings approximately 25 per cent of those units in those two units would be made available to low income persons?

A I don't think that is what I am saying at all. What I am saying is that within the area, in some reasonably dispersed pattern, that 25 per cent of the residents be low income. I don't have any present conception as to what building they should be in or what percentage of the building should be low income. I am saying within the total area.

THE COURT: That is what you said the other day. That is fine. Let's leave that alone.

The lawyer has a perfect right to ask you to concentrate on a certain building and give answers with regard to questions addressed to that building.

THE WITNESS: Fine.

THE COURT: Go ahead and do that.

Q You have no objection, do you, from your own personal view of the type of community you want to live in, that these two new buildings have 25 per cent low income families?

A I would have an objection if by doing so we increase --

THE COURT: The overall formula you announced would be invaded or disrupted; is that what you are saying?

THE WITNESS: Yes.

Q Assume that the balance of the area has about 25 per cent low income families, then 25 per cent low income families in the two additional buildings of which we are speaking --

A Would not disturb me at all.

Q Those two buildings are at the end of the block on which you live, is that correct?

A Right.

Q I gather from most of your direct testimony that your current concern with what is happening in the area has been directed primarily to the unpleasant experiences which you have had as a result of the tenants in the five squatter buildings, is that correct? Those buildings are located at the end of your block?

A If I can understand it, my concern has been for the --

THE COURT: Listen to the question. You began to get your mind on something else. Listen to the question. It was very simple and very clear.

(Question read.)

A Yes.

Q Are you aware of the fact that the plans as to those five squatter buildings are to demolish those buildings and to build a public school?

A Yes.

Q Do you favor that demolition and building of the public school?

A Yes.

Q Do you have any objection that the tenants currently occupying the five squatter buildings, when they are demolished, those tenants then be relocated to the

two new buildings to be constructed at the end of the block?

A No.

Q No objection at all?

A No.

Q The concern you have with the tenant families, they relate to the street and as a result of that there is a lot of noise on the street, that they allow garbage to pile up unnecessarily in front of their house, there is a bugle player who carries on through all hours of the morning, radios are placed in the window and make noise in the street,and that there are firecrackers from Mother's Day until the end of fall.

As to those particular problems and your understanding of the community design, do you believe that by placement of those individuals in a new building, such as the ones that are contemplated, that those problems to some extent would diminish?

A I believe so.

MR. LAND: No further questions.

THE COURT: Mr. Gold, please.

CROSS-EXAMINATION

BY MR. GOLD:

Q Mr.Friedberg, what exactly do you mean by "urban

design"?

A The arrangement of the physical environment to ac commodate specific or assumed programic objectives and the programic objectives can be residential -- can be any one or a combination of the following, residential, land used for residential development, commercial, recreational, or industrial development.

Q Does that concept involve the physical placement of particular types of buildings?

A Yes.

Q And also the height or high and low placement?

A Correct.

Q So basically, then , if you are an urban designer, your concern is with physical placement of buildings for a more desirable environment?

A It goes beyond that. It goes far beyond that.

The contemporary practice of urban design includes economics, sociology, and various forms of environmental psychology as well as physical designs. These are the criteria on which you base the physical design.

Q You m ean by placement of buildings in a particular manner, one or another building might be more marketable or more desirable to particular people?

A Not only the placement -- yes, the placement

would be one potential way of demarcating a difference in value between buildings, but the social composition and the economic rental scale, or the rental scale, would be otherwise. It is not entirely, and this has been demonstrated by other experts and myself, the placement or organization of buildings that determins its success, its economic or social success.

Q So in the concept of urban design you get into the people who are actually going to live in these buildings?

A Very definitely.

Q Did you participate in the planning or urban design of the high risers on Columbus Avenue?

A Only in the site work of those buildings I mentioned the other day.

Q Those are mostly public housing?

A No. They were mostly Mitchell-Lamas.

Q Which ones did you work on?

A 97th Street between Columbus and Amsterdam.

97th Street between --

Q Slowly.

A Westgate, I think it is called.

Central Park Gardens on 97th between Columbus and Central Park West.

Columbus Towers, I believe that is 94th Street.

I worked on the Gottesman Plaza, not on the housing unit itself, but on the plaza, on 94th and Amsterdam.

I worked on the building on 94th between -- on Columbus and 93rd and 94th. I don't remember the name of that building.

I worked on Columbus Towers.

I worked on the playground -- I worked on the building between 88th and 89th on the east side of Columbus Avenue, the proposed building.

Q That is 41?

A Correct.

Q That is the State Mitchell-Lama building?

A Yes. There are a few others.

Q Did you do any work in connection with Stephen Wise Towers?

A No.

Q Did you do any work in connection with the Site 30 proposed project?

A Tell me what street that is on.

Q Between 90th and 91st Street on the west side of Columbus.

A Yes. Yes.

Q Were you --

A Is that one that Lefrak is building? I was the landscape architect for that job.

Q What exactly, when you function as a consultant to the architects in connection with all these jobs that you have participated in, do you do?

A Provide the site development work and drawings, working drawings, design site development drawings and planting for the area adjacent and surrounding the building.

Q The design of the building itself?

A No. The surrounding, the environs of the building.

Q The shrubbery, the landscaping?

A The playgrounds, the sitting areas.

Q In connection with some of these buildings, for example, the Leader House between 92nd and 93rd on the west side of Columbus -- are you familiar with that one?

A I believe so. Definitely. On the west side, right.

Q The west side of Columbus.

A Right.

Q You are familiar with that?

A Yes.

Q Would you say that there are open space areas around that building?

A It appears to be, yes.

Q With benches?

A There are walls around that.

Q Inside the walls.

A There are some facilities around it, yes.

Q Did you participate in the design of that particular one?

A No.

Q Have you participated in the design of any building in this urban renewal area where there are similar types of open space or plaza areas around the building?

A Yes.

Q Those areas are commonly referred to as setback areas?

A Yes.

Q In terms of urban design and planning in today's world is there a trend toward setbacks and open spaces?

A Well,you are getting to a very complex area.

Q Yes or no.

A There was a trend. At the present time there is a concept being promoted called low rise high denisty, or zero lot line, and the purpose of this is to provide as high a density of housing without having tall towers or

slabs, so there is a trend -- there was a trend and now we are shifting from that trend specifically in low income areas.

Q At the time that these structures were planned for construction in the late sixties the trend was toward open spaces and high buildings?

A Yes.

Q Those open spaces provide an area for people to congregate?

A Yes.

Q Children to ride bicycles?

A Yes.

Q Are you aware of the fact, by the way, that this lawsuit involves the very Site 30 on which you are the landscape architect?

A No. Yes, I was, indirectly. My awareness is very slight.

Q Your awareness of the involvement in Site 30 in this lawsuit is slight?

A Yes. My awareness of Site 30 and its change from a Mitchell-Lama which we were originally contracted to do to a low income housing was less than slight.

Q In connection with that change, did you ever appear at any City Planning Commission or Board of Estimate

hearing with respect to that?

A My role in these projects is minimal. In these particular projects it is minimal. I would not be asked to --

Q I am not talking with respect to your work in connection with the City. I am talking with respect to you as a member of the West Side community.

A No, I did not.

Q You indicated that when you first made a determination to come into the West Side area in 1962, there were three tings, I believe, that concerned you, and made this area one which you thought was good for you. Those were that it was a diverse area which had a fair amount of amenities and facilities, it was adjacent to Central Park, it had transportation links to the rest of the city that were good, and it was within your income bracket.

Were those the three major items that concerned you when you bought in?

A Yes.

Q When you bought the original building, that was 116 West 88th, which you still own, is that correct?

A Yes.

Q What was the acquisition cost?

A $20,000.

Q Did you consider that a good buy?

A I considered that an appropriate price.

Q For a brownstone in the West Side?

A Yes.

Q You indicated you did not start work for the City in this consultant capacity until '63 or '64, after you took title to the brownstone.

A In this area you mean?

Q That's correct.

A There was no work in this area prior to that.

Q Which you could do?

A Right.

Q When you came into the area in '62 prior to your purchasingthe house, did you speak to any city people as to what was going on there?

A Yes.

Q Who was that?

A Sam Ratensky.

Q Anybody else?

A Yes. Mr. Lauria.

Q Where did you speak to Mr. Lauria?

A At the HDA. At that time it was HRB.

Q Was that somewhere on the site in the area?

A No. It was down at the office, at their office on 2 Lafayette Street.

Q Were you aware of Mr. Lauria's function at the HRB at that time?

A Yes.

Q What was that?

A I believe he was in charge of this particular project.

Q In charge of the entire project?

A No. I don't know -- at the time I thought he was involved with giving out the information on the project and therefore had -- his involvement was in organizing a part of the project. I was not exactly sure as to his specific title.

Q Did you make inquiry of Mr. Lauria as to the requirements for purchase or renovation of a brownstone in the area?

A Yes.

Q Did he help you in that direction?

THE COURT: Rather than the word "help," did he talk to you and discuss it with you?

THE WITNESS: Yes.

Q Did he provide you with the necessary information?

A He provided me with information.

If I can expand on it for a moment --

THE COURT: We don't want an expansion.

All we want to know is this, did you go to him in order to get details that would be helpful to you in your own project and did he furnish that kind of material, that kind of information?

THE WITNESS: Yes.

THE COURT: Along what lines was the information?

THE WITNESS: I wanted to know what was going to happen in the area, Number 1. I was advised as to the projected development.

I was also advised as to the architects who were going to be on the buildings. I think that, for me, as a designer, that was an important issue. Edward Stone was going to be doing buildings on the north end and there were a number of prominent architects that were going to do luxury buildings.

THE COURT: You are giving a lot of detail I don't want.

Right now I want to know, what was the subject matter?

THE WITNESS: What buildings the city was going to sell and what would be my opportunity to buy those. What would happen if I bought my own building and if I turned it into a multiple dwelling or two-family house, what the tax advantages were of each. What were the relocation

problems. A few minor other points.

THE COURT: That was all with Mr. Lauria?

THE WITNESS: As well as Mr. Ratensky too. Mr. Ratensky was a personal friend.

Q YOu also stated that you familiarized yourself with the urban renewal plan, is that correct?

A Yes,sir.

Q Did you read it?

A No, I didn't.

(Recess.)

Q Mr. Friedberg, you have testified to some experience in the urban renewal process. What would you say the goal of urban renewal is?

A To physically renew and physically and environmentally and socially and economically renew an area of a deteriorated area, generally of an urban community.

Q Part of the tools woul be clearance?

A Yes.

Q And redevelopment,right?

A Yes.

Q In this case --

A Or rehabil tation.

Q In this area rehabilitation and conservation?

A Yes.

Q Do you know, by the way, how many total units were planned for the entire 20-square block area including the rehabs and the conservation units?

A No, I don't.

Q But in your concept of the numbers of low income that you contemplated were going to be in the area, that would be the numbers spread out throughout the entire area, you bought another brownstone?

A Yes.

Q Shortly after you bought 116, is that correct?

A Yes.

Q What was the acquisition cost of that one?

A I believe it was $34,000.

Q Was that a similar type of structure as 116?

A No.

Q Was it larger?

A Yes.

Q You bought that about one year after the initial one?

A A little less than a year, with someone else, a partner.

Q Then you said you sold it?

A Subsequently.

Q Did you renovate it prior to selling it?

A Yes.

Q What was the price for which you sold that second brownstone?

A $125,000.

Q You also testified that in connection with the ratio of low to middle income or middle to low income you said in particular at Page 2417 on Line 11:

"We found in certain Mitchell-Lamas projects in the city where they looked for racial not an economic balance, looked for a racial mix, that they had extreme difficulty. This was the State Division of Housing. They had extreme difficulty in maintaining that in the areas that were not initially racially mixed."

Firstly, which projects are you referring to?

MR. MORRIS: Page, please.

MR. GOLD: 2417.

A Riverview Towers on Riverside Drive and 140th Street.

Q Riverside and 140th Street?

A Yes.

Q Is that the only project you were referring to?

A No. I don't know the addresses of the others. Let's see. They were in Brooklyn.

I would not be able to recall. That particular project is the one I can recall offhand. There are allusions to other projects. We worked on others with similar projects. I cannot remember the specific names.

Q I think what you were saying there --

A Excuse me. I do remember the other one. It's not in Brooklyn. The one I am thinking of is -- the architect was Seymour Joseph and it's in Harlem at 100 -- I believe it's north of 106th Street, something Gardens. There are seven slab buildings next to the bus terminal, and I do remember the specific -- Esplanade Gardens.

Q EsplanadeGardens?

A Yes.

Q Okay.

A That might not have been a State job, that might have been a City job, but the same problem existed there.

Q The problem, as I understand it from your testimony, was that these were projects in basically non-white areas?

A Correct.

Q In which the State or the City was trying to induce whites to reside, is that correct?

A They were trying -- yes.

Q Did you have personal experience with these projects?

A Yes. I was the landscape architect on both projects.

Q You were the landscape architect?

A Yes.

Q Did you have anything to do with the tenanting of the projects?

A No.

Q You also mentioned studies of people like Milgrim and Deerfield.

A No. Milgrim in the Town of Deerfield.

Q Deerfield, Massachusetts?

A Illinois.

Q Is there a title to that study?

A No, but I do have another study right here. I don't have the title to that study.

Q Do you know when it was made?

A 1950.

Q 1950. And it involved Deerfield, Illinois?

A Yes.

Q What in particular in Deerfield, Illinois?

A Mr. Milgrim, who had built housing, integrated housing, around Philadelphia, tried to build an integrated project in the outskirts of Deerfield. There was resistance to that. He finally built it. The racial mix within tnat community was analyzed to see at what point it would be threatening to the white population, at what tipping point it would be threatening to the white population and therefore cause some removal.

Q You are talking about the racial mix in the housing project community?

A The percentage, the balance between the number of white families against the number of black families, in this particular case.

Q In a suburb of Deerfield?

A Yes.

Q Based on your experience on the west side, would you equate the west side area of Manhattan with the suburbs ofDeerfield, Illinois?

A In what manner?

Q In terms of --

A Certain ways, yes.

Q -- acceptance of low income or non-white people

by white people.

A You know -- if I could understand it. I would say in my experience there are certain things that I would equate, yes.

Q You would?

A Sure. I equate human behavior as being relatively consistent, middle income reacting in a specific manner, consistently reacting in a specific manner.

Q Would you say that the middle income person in the West Side Urban Renewal Area has a particular life style that is perhaps somewhat different from the middle income white person let us say in Flatbush, in Brooklyn?

A Yes. It is a matter of degree.

Q Matter of degree. In your discussion of the Deerfield situation, you testified, and I will read it to you, at page 2418, line 3.

THE COURT: Read it slowly.

Q "And here again, where you had an economic homogenous group but you had racial differential."

What did you mean by that?

A I think maybe the word was improperly used.

Q Which word?

A "Differential." Where you had a racial mix, an economic homogenous community with a racial mix.

THE COURT: You see, Mr. Witness, you are forgetting that you speak at a very rapid rate and the court reporter is trying to get your words, and the result is that it comes out other than what you said. That's a permanent record.

So I wish you would just slow up a bit so that they will understand what you are saying.

THE WITNESS: It might have been my error, your Honor.

THE COURT: It undoubtedly was, surely.

Q Would you explain what you meant by your testimony that I just read to you?

A That there is a consideration, a racial consideration, in the development of a community, and that there are certain balances which are perceived as acceptable and that when those balances are invaded, that it works to the detriment of the community, to the detriment of the mix of the community.

THE COURT: All right.

Q Are you saying that it's detrimental if all the people are middle income but there are too many non-white people? Is that what happened in Deerfield?

A I am suggesting -- yes.

Q That is different, then, isn't it, than the

West Side?

A No. There are two issues. One is economic and one is social or racial.

Q Would you then have an objection to tenancy in the West Side by a large group of black families who were clearly middle income families?

A I think I would have an objection, again depending upon the degree. I would like to live in a racially integrated community which parallels the racial distribution of the country or the City. I am not looking to live in a predominantly black area any more than I am looking to live in an only-white area.

I think it's very important that there be balances which are similar to the kinds of balances we find throughout the country, you know, both for myself and my children to experience, and I find that -- well, that would be it.

So it is important for me to find a situation. There are middle income black areas we could have moved into if that was my desire. My desire was not to move into a totally white community but a mixed area with balances.

At this time I don't have a sense of what percentage is acceptable to me, what is a tolerable percentage,

in terms of racial mix. I don't feel 20 or 30 per cent. I have no perception what the percentage would be. It would have to do with my feeling of what the area was like, what it was like socially.

Q Is the percentage now existing in the West Side Urban Renewal Area acceptable to you racially?

A Yes. That doesn't seem to be my difficulty.

Q Your difficulty is with the income levels of people?

A Correct. My children go to an integrated school. It is primarily the income level.

Q That is a public school they go to?

A No.

Q Where do they go?

A They go to Ethical Culture.

Q You also spoke about the upper income or the luxury housing that was contemplated being built, and you said that you were told initially that was tentative and that you could understand that, is that correct?

A Initially it wasn't tentative. You said did I read the Urban Renewal Plan. No. I was given the plan. Being a landscape architect, a planner, I read the graphic document which indicated --

Q Excuse. What is the graphic document?

A The City produced an eight and a half by eleven sheet of paper indicating what sites were to be redeveloped and what was to occur on those sites and how many units were expected.

THE COURT: And was that acceptable to you as you understood it?

THE WITNESS: Yes, sir.

Q And that graphic document you say indicated the number of units to be expected?

A I believe it did. If that one didn't, there were others that indicated the number of units at least, I believe, on the low income sites, if I am not mistaken.

Q Let me refer you to your testimony, sir, on 2418 again, at line 18.

"The upper income I was told initially was somewhat tentative, they were not quite sure. I could understand that because from a real estate standpoint you were trying to attract into an area that had heretofore not had upper income."

A I was told. The document indicated not that they were tentative but I was told - this was talking again to Sam Ratensky. We are trying to induce, again, developers and they had developers at that time who did commit themselves to the site who subsequently pulled out.

Q In other words, in connection with that graphic document or map, you were told,"yes, it's on there, but we may not be able to go ahead with it"?

A Yes. I was also told at the same time --

Q I don't want anything further. It turned out eventually they were not able to go ahead with the luxury or fully taxpaying housing?

A Correct.

Q You said you got tax abatement on the brownstones?

A I did not.

Q You did not get tax abatement?

A I did not. I did on the second building.

Q Why was that?

A Because the first building -- I have to tell you --

THE COURT: We are not sitting here spending time on that. We are trying to utilize all the time we possibly can. If he can't give us a direct answer, go to the next question.

A I did not get tax abatement on the building I live in.

Q Was the fact you got tax abatement on the second building an inducement for you to buy it?

A No.

THE COURT: Next question.

Q You also indicated that you were troubled at one point, about 1965 or '66, because there seemed to be a lot of low income housing units coming into the area below 94th Street.

A Correct.

Q And pretty much nothing of that nature above 94th Street, is that correct?

A Yes.

Q Are you aware of the fact that Site 4, which is up on the west side of Columbus between 96th and 97th is now designated as public housing?

THE COURT: Are you aware?

A No.

THE COURT: Next question.

Q Assuming that is so, sir, is that an acceptable site as far as you are concerned for public housing?

A Yes.

Q Are you familiar with the number of brownstones which were rehabilitated -- brownstone units which were rehabilitated by the Housing Authority in the West Side Urban Renewal Area?

A I am familiar with the buildings but not the

number of units.

Q I see. You indicated prior to 1970, from the inception of the plan, that things seemed to be moving along at a reasonable pace and reasonable design level.

What do you mean by a reasonable design level?

A The quality of the design, the buildings, the general environment.

Q That was acceptable to you?

A Yes.

Q And then things seemed to slow down, is that correct?

A Right.

Q Were you aware when you bought the brownstone on 88th you were in the third phase of the project?

A Yes.

Q And that would be the last phase to be developed?

A Yes.

Q In your work in urban renewal both in the City of New York and St. Louis I think you mentioned, and perhaps elsewhere, have you come across time lags in the urban renewal process?

A True.

Q So that things do not always go according to plan, is that correct?

A Correct.

Q Have you also come across modifications and changes in an urban renewal plan over a long period of years?

A Yes.

THE COURT: What kind of changes, for instance? Changes means so many things.

Q Changes, for instance, in the designation of sites for particular types of developments?

A Yes.

Q With reference to the squatter families on 88th Street, the five buildings across the street from you, are you aware of the fact that the City has entered into rental agreements with the families in those buildings?

A No.

Q And that the City is providing essential services such as heat and hot water?

A Yes.

Q And also that the occupancy of those buildings is temporary?

THE COURT: Are you aware of it is all he asked.

A No.

THE COURT: Next question.

Q What I am saying is, when the site on which the

squatter familes are presently living is to be demolished for redevelopment, those families will have to move, is that correct?

A Yes.

Q And that will alleviate some of your present problems?

A Yes.

Q Would you say, Mr. Friedberg, that one of the reasons that the families in those five buildings are outside in the summer evenings when it's warm is because it may be very hot inside that house?

A Very much so.

Q Is your house airconditioned?

A No.

Q Not at all?

A No.

Q To your knowledge, are the buildings across the street from you airconditioned?

A No. Excuse me. I have a window unit for my bedroom.

Q That would also account for the reason you don't find people or the people living in those buildings outside as late or at all in the wintertime?

A Correct.

MR. GOLD: That is all.

THE COURT: Mr. Douw.

CROSS EXAMINATION

BY MR. DOUW:

Q Mr. Friedberg, you mentioned in your testimony the Pruitt-Igoe project in St. Louis.

Were you involved professionally with that project?

A Yes, I was.

Q In what manner -- as landscape architect?

A As a planner.

Q As a planner. Were you involved in the design of that project?

A No. I was brought in some eight to ten years after the project had been build and after we had done a fair amount of work in some of the low income areas of New York and had gotten recognition to analyze the problems and propose a physical design which might alleviate some of the difficulties that they were finding within the project.

Q You say eight or ten years after the project. What date would that be?

A I believe our involvement in Pruitt-Igoe was in 1967 or '68.

Q What do you mean by changes in the design of the project? What could you have done or what did you consider?

A Well, we proposed in our plan a design, but suggested that it not be implemented unless certain service programs, educational programs be also implemented simultaneously and that a reasonable economic mix be established, the idea of physical design alone would not ameliorate the problems they were finding in the project. The cost --

Q You say an ecomonic mix, a reasonable economic mix, was one of your recommendations?

A Correct.

Q The project was all public housing, was it not?

A That's right.

Q What would be a reasonable economic mix within a public housing project?

A No, we suggested that parts of the project be sold to facilitate a change in the economic mix. They had 3,400 units of no income or mostly no income, mostly welfare, over 60 per cent -- not over -- 100 per cent were black, over 60 per cent were on welfare, over 60 per cent were children and I could go on, and we suggested that caused a kind of pathology.

Q Was there a time in the Pruitt-Igoe project when it was racially integrated?

A No. It was originally set -p to be racially -- it was originally set up to be two separate projects, pruitt and Igoe. Igoe was to be white and Pruitt was to be black.

At that time, because of some federal legislation, it was mandated that the City of St. Louis integrate the project. They attempted to integrate the project and it became 100 per cent black.

Q Do you know when the City of St. Louis attempted to integrate the project, did white families actually move o of Pruitt-Igoe?

A I don't know, and I don't know if they ever were in the project. If so, it was a small percentage. There are white families in housing projects, low income housing projects, in St. Louis.

Q Am I given to understand that although originally the City of St. Louis had planned to make what in effect is a segregated housing project that because of federal legislation or other law that never actually went into effect, is that correct?

A Correct.

Q And so, if I understand you correctly, it became

100 per cent black without ever having been either segregated or integrated, is that correct?

A Correct. At least to my knowledge.

Q Then can I conclude from what you say that the Pruitt-Igoe experience is not really a tipping situation; is that correct?

A No, it is not correct.

Q Mr. Friedberg, you mentioned in your testimony--for the record I am referring to pages 2432 and following--a meeting in the fall of 1971 at Brandeis High School. Do you recall your testimony about that?

A Yes.

Q I understand from your testimony that you referred to it as a Strycker's Bay meeting. Is that correct?

A No, I don't believe it was a Strycker's Bay meeting.

Q Do you know who sponsored the meeting you referred to?

A No, I don't.

Q Do you know who chaired the meeting?

A I believe Arthur Logan chaired it.

Q Was it, therefore, a CONTINUE meeting?

A I'm not sure. The reason I am not sure is I came to the meeting towards the end and sat there, to

to pick up my wife, who attended the full meeting.

THE COURT: All of that is unnecessary. Strike it. That's the only way to deal with it. Strike it. Then he won't do it any more, I hope.

Next question.

Q I would like to ask you about the purchase of your two brownstones. Let's first take 116 West 88th Street.

What was the nature of the tenancy at 116 when you purchased it?

A It was a rooming house.

Q Single room occupancy?

A Primarily.

Q Did you have families among your tenants?

A Yes.

Q How many?

A Three.

Q And how many single persons, if any?

A Six.

Q As for the three families, do you know whether they had any relocation rights?

A Yes.

Q What were those rights?

A They were to be relocated and paid for their

relocation.

Q Did you arrange that with the city or a private individual?

A Private individual.

Q Do you know if those families had a right to be housed within the UrbanRenewal area?

A Yes, they did.

Q They did have that right?

A Yes.

Q For the six single persons, were they elderly or younger?

A They were mixed.

Q Approximately how many were elderly?

A About half, I believe.

Q About three of the six?

A Three to four.

Q Can you describe the relocation right or benefits which the three or four elderly single persons had, if you know?

A There was a specific amount of money for each single person, the amount of which I am not sure. There was again a specific amount of money for a family, and once again I am not sure.

Q My question is only directed to the elderly single people.

A They had a specific amount of money they were to get as well as an apartment or a place to live.

Q What about the right to be housed within the urban renewal area?

A They had that right.

Q For the other single individuals who you would describe as not being elderly, did their rights differ in any respect, if you know, from the elderly?

A I am not sure.

Q I would like to turn to your other brownstone. What is the address?

A 125 West 88th Street.

Q What was the composition of that tenancy when you bought it in terms of families and single persons?

A One family and the remainder single room occupancy. I don't remember how many.

Q Other than the one family, were the tenants single persons?

A Yes.

Q And some elderly?

A Yes.

Q And some less than elderly?

A Right.

Q As far as you know, were there relocation rights and benefits the same as you described for 116?

A Yes.

MR. DOUW: That is all, your Honor. I would like at this time to move to strike those aspects of his testimony that deal with the tipping point issue and his observations as to the alleged social characteristics of certain economic classes on two grounds, (1),that it is not within his field of competence, and (2), that as to certain observations that he made about projects, it was not based upon personal observation.

THE COURT: Mr. Morris.

MR. MORRIS: Your Honor, I respectfully submit that the witness testified that he has had extensive experience in urban renewal projects not only in New York but in other parts of the country as well, and has observed and has had something to do with the questions involved in the economic and ethnic aspects of the occupancy of those projects and therefore is qualified to make the statement that he did to the effect -- dealing with the question of tipping point.

THE COURT: I am going to leave the testimony in. Its weight, of course, is entirely up to the fact finder, but

it is admissible and it stays. The motion i denied.

What do you say as to the motion with regard to the ethnic portion of his testimony as to which Mr. Douw referred in his motion?

MR. MORRIS: May I have that again, your Honor? I am not clear on it.

THE COURT: Would you read Mr. Douw's motion, please, Mr. Court Reporter?

(Record read.)

MR. MORRIS: I respectfully submit, your Honor, in addition to what I said with respect to the first item he did testify that he was personally involved, he lived in the area during all this period and actually was retained to do work on a number of different projects in the area and therefore was qualified to testify as he did from personal observation of what he knew and saw in the area in which he lived.

THE COURT: There again, the weight to be given is up to the fact finder. The question is whether or not the testimony on that score is so weak that it doesn't warrant being allowed to remain.

I think that while it may not be the strongest testimony on that score, it has sufficient strength to be allowed to survive and, accordingly, the motion is denied.

We are through with this witness, Mr. Morris?

MR. MORRIS: Yes.

THE COURT: Thank you, sir.

(Witness excused.)

THE COURT: Come back, Mr. Gaynor. I would like to get these things completed.

J A M E S W I L L I A M G A Y N O R resumed.

CROSS-EXAMINATION (continued)

BY MR. LAND:

Q Mr.Gaynor, are you familiar with the State's current plan for Sites 41 and 44 of the West Side Urban Renewal area?

A No, I am not.

Q I thought you told us you had been keeping yourself abreast of the developments in the area. Is that not correct? You don't know about 41 and 44?

A You have my record, I believe, which indicates the projects that are now slated for State aid.

Q What are we talking about?

A You have my record that I spoke from.

Q I have what Mr. Morris gave you.

A Yes. That is mine. May I have it?

(Document handed to witness.)

A Projected financing as shown in this particular

table --

Q Let me ask you this: Other than what is in here, you have no independent knowledge about what is going on on Sites 41 and 44, is that correct?

A Correct.

MR. LAND: That is Government Exhibit S.

THE COURT: That is the way to do it.

Next question.

Q Mr. Gaynor, in addition to Government Exhibit S, which is the 8-1/2 x 14 inch paper, there are four sheets of typewritten pages approximately 8-1/2 x 11 inches in length and these are the documents upon which you relied to give your testimony, is that correct?

A To give testimony with respect to those numbers.

MR. LAND: Your Honor, we have a very definite problem because the so-called addendum Mr. Morris referred to is one page. He represented the witness was referring to the addendum, but we have three pages that I frankly have never seen before. I think his testimony has gotten considerably out of whack by reason of this.

THE COURT: All of which is a part of what he was handed by Mr. Morris, is that what you are saying?

MR. LAND: Yes. Mr, Morris said I am showing him the addendum, whereas he had the addendum plus three

other pieces of paper which I have never seen before.

THE COURT: There was an occasion when I asked Mr. Morris to tell us what was it that he turned over to this witness for study and on which the witness was going to give testimony.

I ask Mr. Morris again, would you be good enough, Mr. Morris, whether it is in evidence or not in evidence, what did you turn over to this witness to study?

MR.MORRIS: I will take each of the items.

I turned over to him Defendants' Exhibit S, which is in evidence, and that was one of the items. I also turned over to him prior to the time that Defendants' Exhibit S was prepared a statement which had been prepared by our people, by Lisa Liebert, as a matter of fact, which she prepared from information she acquired from City records and City documents which at that time, which predates the reinstitution of the trial on April 22, at that time was the only document we had showing the figures as to the completed buildings, the buildings in construction and the buildings to be completed. This statement was mailed to all counsel prior to the time we reinstituted the trial at the Court's request, and I took this statement --

THE COURT: What do you mean at the Court's request?

MR. MORRIS: The Court recommended we get together on the figures and in pursuance of your direction that we get together on the figures, I sent this particular paper out to counsel.

THE COURT: It consists of how many pages, Mr. Morris?

MR. MORRIS: Three pages.

THE COURT: Has it got a title so we can always refer to it by something other than the contents of it?

MR. MORRIS: Yes.

THE COURT: What is it called?

MR. MORRIS: Current breakdown by income level occupied or in construction.

THE COURT: Fine. What else did you turn over to Commissioner Gaynor?

MR. MORRIS: I turned this over and then I turned over the addendum to City's West Side Urban Renewal area occupied units, development sites, which is the addendum that I prepared after receiving Defendants' Exhibit S.

THE COURT: And on which counsel have yet to give you agreement on?

MR. MORRIS: Yes.

THE COURT: There it is. As I understand it, you have a perfect right to examine him on this but the witness had a perfect right to be -- I mean we were right in allowing him to give us his conclusions and bases for those conclusions and you have a right to cross-examine him on the material that was turned over to him and which has just been enumerated by Mr. Morris.

MR. LAND: Two observations for the record, your Honor. One, Mr. Morris says he mailed these to me. I have not seen these three other pages he referred to before.

Second, if Mrs. Liebert in fact prepared these documents, it seems rather strange to us that during her rather lengthy direct examination that not once did she refer to them.

MR. MORRIS: A very simple reason, your Honor, because they were superseded by Defendants' Exhibit S, which we ultimately agreed on. The figures which Mrs. Liebert prepared, as I explained before, were those which we initiated and sent to other counsel for the purpose of provoking an agreement on the part of all counsel as to what these figures were. So these figures were our statement based on our investigation of the records of what the figures were.

I sent them around to get agreement from counsel. As a matter of fact, as a result of sending them around, a meeting was had in my office with Mr. Douw and Mr. Levy, where we sat down and discussed the exhibit and Mr. Douw pointed out there were certain inaccuracies in it, that he didn't agree with. He also pointed out there were two schedules, one where the figures differed somewhat from those which I had sent him, to which I agreed was the case.

As a result of that meeting, we then submitted figures to the city, to Mr. Gold. Mr. Gold went ahead and explored the city's records and eventually that led to the preparing of Defendants' S, upon which we all agreed.

THE COURT: That is sufficient explanation to me, for my purposes, at this point. Let me tell you why. As I explain the law, if he turned over even a gravestone to the witness to examine, as long as it is clearly made clear on the record what the witness based his conclusion on, all the opposition can do is take that tombstone and the other material and cross-examine the witness in order to belittle or to have wiped out his own conclusions.

Now you have before you all kinds of papers. One, you have S, you have the three-page document that

counsel has expanded upon, and you have got the one sheet of material that he has been referring to as an addendum.

At this point, I am going to ask the clerk to be good enough to mark the three sheets as S-1 for identification and the other remaining sheet S-2 for identification.

That ends that.

(Pause.)

THE COURT: How about the addendum, Plaintiffs' Exhibit 45 for identification? What is 45 for identification? My good court reporter says maybe we --

MR. MORRIS: That's it, your Honor. It has already been marked for identification.

MR. GOLD: One page.

THE COURT: Sure.

MR. GOLD: There is a serious problem with that. I think we can straighten that out among counsel and then it can go into evidence, but at the moment, no.

THE COURT: I understand. I just want you to know that our court reporter was good enough to point out that the addendum we are talking about now that has just been marked S-2 for identification, has already been marked 45 for identification and none of us, including the

Judge, spotted it. That is all.

THE CLERK: Defendants' Exhibit S-1 S-2 and 3 for identification.

MR. LAND: Being the three pieces of paper with typed material on them, 8-1/2 x 11 inches in size, prepared by Mrs. Liebert.

THE COURT: The one sheet referred to as an addendum, has that been marked S-2?

MR. LAND: No. That is 45.

MR. MORRIS: I am not quite clear and I would appreciate clarification. Do I understand now we have Exhibit S, DEfendants' Exhibit S, and then Exhibit S-1, consisting of the three sheets?

THE COURT: S-1 for identification.

MR. MORRIS: For identification and then we have 45 for identification, which is the top sheet.

THE COURT: And which you represented totaled everything that you turned over to Commissioner Gay nor.

MR. MORRIS: Yes.

MR. LAND: He stated something wrong. The three pages were separately numbered S-1, 2 and 3.

MR. MORRIS: That was my question.

THE COURT: That is all S-1. I don't want S-1, 2 and 3. S-1 are those two pages.

MR. LAND: All three pages are now S-1.

xxx (Defendants' Exhibit S-1 was marked for identification.)

Q Mr. Gaynor, what was originally proposed for Site 36 in the West Side Urban Renewal area located on the east side of Columbus Avenue between 89th and 90th Streets?

A I don't know.

Q Do you know what is there now?

A No, sir.

Q You testified on direct examination a number of low income families were relocated from the area, is that correct?

A Yes.

Q Approximately how many famiies were relocated from the area?

A I don't know.

Q Do you have any idea at all?

THE WITNESS: Your Honor, in endeavoring to get this information from the project office that is located within the area, and I was refused any information.

Q When did you attempt to get this information?

A 1972, spring.

Q You did not have any knowledge for the whole ten years of commitment to this project, not one whit of an idea, how many people were relocated from the area?

A That's right.

Q Then you have no idea as to how many units would be required, low incomes would be required, within the area for the relocatees; is that correct?

A No, it is not correct.

It is impossible to estimate the number of unites that would be required for the relocatees. The relocatees might not return on the site.

THE COURT: But there is data that pinpoints that, is there not? Is that the data that you cannot get?

THE WITNESS: Yes, sir.

THE COURT: But he has a right to say that despite that data, have you, from your expertise in the field, even a general notion on that score? If you say no, that's it, and we will go on to something else.

THE WITNESS: No.

Q You testified that in 1966 the number of low income units for an area -- I presume you meant low income units, new construction -- was to be fixed by the City at

2559; is that correct?

A Yes.

Q Was that 1966 figure of 2559 consistent with the goals of the urban renewal plan?

A At that time, yes.

Q Today we have 2559 units of low income housing, new units of low income housing, within the West Side urban area; that likewise will be consistent with the plan, right?

A Yes.

Q I will presume, Mr. Gaynor, that if there is a slight increase above the 2559 units, assume 100 units in excess of that, that that 100 excess will not become inconsistent with the plan?

A The 2559 is already an extension of the 2500.

Q Answer my question, please.

A It could.

Q It could?

A Yes.

Q You are not sure, in other words,

A No.

Q Suppose we go up to 2560 units, one more unit, could that make it inconsistent with the objectives of the plan?

A I would doubt it.

Q Somewhere between one and one hundred we might become inconsistent; is that correct?

A You might.

Q You are not sure. You might and you might not?

A Yes.

Q You testified on direct examination that you spoke to approximately five neighbors to get their feelings as to what was happening in the urban renewal area; is that correct?

A Yes.

Q Was one of those people Dr. Fine?

A Yes.

Q Was one of those five Dr. or Mrs. Liebert?

A Yes.

Q Both of them?

A Yes.

Q Did you talk to Mrs. Fine?

A I believe I met Mrs. Fine in their apartment, yes.

Q You talked to Dr. Fine?

A Yes.

Q Dr. and Mrs. Liebert?

A Yes.

Q How about Mrs. Sours, Dr. and Mrs. Sours? Didyou talk to them?

A I do not know. The people I talked with I met

through Dr. Fine and I could not recall all I met.

I met Mrs. Liebert and Dr. Fine.

THE COURT: Do you want to make a motion on that?

MR. LAND: No.

THE COURT: There was a motion made, and whether you renew your motion or not I will strike it. The evidence is insufficient with regard to neighbors, and the information elicited on that score is woefully inadequate. That's what I meant by "of weak value." This has no value from which I could come to any conclusion. That is stricken.

Does that curtail cross on that point?

MR. LAND: There is one thing that is important.

THE COURT: Ask it.

MR. LAND: One of the theories of our case is that people who have testified, like Mr. Gaynor and Mr. Starr, gained their knowledge of the area from the CONTINUE group and not of people who will be testifying here.

THE COURT: That is argument. You can advance that at the appropriate time. It has occurred to me. What value do I give to it and so fourth? This all goes to the weight. We are talking about admissibility, two totally different notions.

Q Your conversations with people that you have testified about were people connected with the CONTINUE

organization; is that right? I am referring to the group of people in Dr. Fine's house.

A Yes.

THE COURT: You people went after each one of those witnesses and developed it to a fare-thee-well. Why do we need to waste time on that?

Q Mr. Gaynor, you testified that south of 90th Street, on Columbus Avenue, there is virtually a slum; is that correct?

A No. I said it was substandard, and that it should be redeveloped as promply as possible because it was affecting the entire area.

Q Tell me what is immediately south of 90th Street on the west side of Columbus Avenue.

A I would have to have the map.

(Pause.)

May I have my designation for the projects for the site.

Q You don't know of your own knowledge? You have to refer to some chart or some map?

A That is true.

Q I'll tell you what is there: it is a co-op building, Turin House. Is that part of your characterization as "substandard south of 90th Street on Columbus Avenue"?

A "substandard" co-op? Yes or no?

A No. It is not substandard. I said that the area was becoming substandard.

Q We'll go down that area and see if you know what you are talking about.

The first building south of 90th Street is a co-op.

MR. LAND: Do you concede that, Mr. Morris?

MR. MORRIS: Yes.

Q What is on site 41? Do you know?

A No.

Q Do you know what is on site 46 immediately south on the west side of Columbus AVenue?

A I believe this is the one that is scheduled for rehabilitation.

Q What is there right now?

A I don't know.

Q On the other side of the stree, the east side of Columbus Avenue immediately south of 90th Street, you have site 35 on this map. What is there now?

A I don't know.

Q On site 40, immediately south of that?

A I would need my records, which you have.

(Pause.)

Q Your records will show that nothing is built there right now. Do you know what is there now?

A There are pretty substandard areas in that section.

Q Do you know what is on the block between --

A Specifically, no.

Q How about site 44 between 87th and 88th Streets, do you know what is there on that site?

A No.

Q Nevertheless it is substandard by your testimony; is that right?

A The area is substandard.

Q Do you know, Mr. Gaynor, what is on the east-west streets of 87th, 88th, and 89th streets?

A The area --

Q Do you know? Yes or no.

A No.

Q Other than this area south of 90th Street, it is your testimony that the balance of the West Side urban renewal area isnot now substandard; is that correct?

A Yes.

Q You are knowledgeable as to what is going on north of 90th Street?

A I have seen the finished projects.

Q What do you see as you look up Columbus Avenue

north of 90th Street? What is your visual perspective as you look north?

A It looks good.

Q Darn good?

A Yes.

Q On each corner, on each block, facing Columbus Avenue, you have a high-rise building?

A Yes.

Q Each one is in varying size in terms of height, is it not?

A Yes.

Q Each one is set back with plazas, except for Trinity, correct?

A Yes.

Q You know about Trinity, the wall they have around their building?

A Yes.

Q The architecture of these buildings as you look up Columbus Avenue, each one is of modern architecture that varies with the particular style, correct?

A Yes.

Q On the east-west brownstone streets north of 90th, are not all those streets, consisting of substantially renovated brownstones, tree-lined streets?

A Yes.

Q Are you familiar with Manhattan Island in general? Are you familiar with New York City in general?

A Generally, yes.

Q Can you pick out any other area of Manhattan Island which is architecturally appealing as what you have described north of 90th Street in the West Side urban renewal area, residential area?

A Because it is the only renewal area that involves both conservation, rehabilitation, and redevelopment that I know of on the Island of Manhattan. It is unigque in that respect.

Q Is the most architectually-appealing residential area you can think of in Manhattan?

A I would not like to engage in the question of architecture. I don't think some of the --

Generally I will agree. Yes.

Q You testified, Mr. Gaynor, that in three Mitchell-Lama buildings 80% of the units are occupied by persons of low income; is that your testimony?

A This was the information given to me.

Q You gave us the names of two of those buildings. I believe you meantion Columbus Manor and Westwood House. What is the third one?

A Is is Leader, I believe.

Q The information given to you upon which you rely for the 80% figure, is that contained either in the addendum, Exhibit S-1 for identification or Exhibit S?

A No.

Q Do you have that information with you?

A The information was given to me by the managing agent, Mr. Bromberg.

Q Did he give it to you orally?

A Yes.

Q He said something to the effect:

"Mr. Gaynor, in each of these three buildings we have more than 80% low income families"?

A Two buildings when I first spoke to him, and then later I received information that the third building, Leader, had been tenanted on the same basis.

Q But essentially he said 80%?

A Yes.

Q He didn't show you any charts, statistics, or anything else?

A No. He didn't.

Q When did he tell you that?

A In the spring of 1972.

Q You don't know as a fact then whether or not these

three buildings which you mentioned do, in fact, have 80% low income tenants?

A No. I do not.

Q You are the author of a document entitled A Critical Study of the West Side Urban Renewal Project, NYP-43, dated May 10, 1972, are you not?

A Yes.

MR. LAND: That was annexed to one of the affidavits that have now been deemed exhibits in this trial, your Honor.

THE COURT: Very good.

Q In writing this critical study, did you have before you any documents?

A I had all the available information on the West Side urban renewal project that was contained in the files of the State Division of Housing Community Renewal.

Q That is what you relied upon to write this critical study?

A I relied upon them, and then other information that I was able to obtain in the course of my inquiries, which included a bit of the information furnished by the City in its official statements and releases.

Q You state here on page 2 of your critical study,

Mr. Gaynor:

"The plan recognized the problems broughtabout by the population changes reflected principally in district overcrowding of the residential units and severe enrollment problems in the public schools."

Are you telling us that someplace in the urban renewal plan it is stated that there is severe overcrowding in the residential units and severe enrollment problems in the public schools, or is that a conclusion you reach?

A It was contained in the plan.

Q Reading further down you talk about "the plan." Do you mean the urban renewal plan?

A Yes.

Q In this particular place it would be the first urban renewal plan?

A May 9, 1959, preliminary plan for the area.

Q You further state:

"The plan included one public housing project to be financed bythe State and 7400 dwelling units of private rental, new private rental, and co-operative housing,with one third in the moderate rental range and the remaining two thirds to be fully tax paying housing."

Did you get that information directly from that

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1959 plan?

A Yes.

Q No place else?

A No.

Q By the way, could you tell us what happened to the proposal for fully tax paying housing?

A It went by the wayside.

Q Do you know why?

A I would have to presume that it was not feasible or marketable.

Q Because of rising interest rates and spiraling construction costs?

A Thecost of the housing might very well have precluded from coming in there without some form of tax abatement or financial assistance.

Q The termination of the hope for fully tax paying housing was not because fully tax paving housing was planned for the West Side urban renewal plan but because a viable means of housing simply could not be done anywhere in the City of New York because of spiraling construction costs and insterest costs, isn't that true?

MR. MORRIS: That presumes a set of facts that have not been adduced at all so far.

THE COURT: But he still has a right to fling it

at an expert in order to show later, and argue later, that the expert's testimony was recklessand unfounded and not convincing; that it therefore should be disregarded.

Objection overruled.

A Housing has been --

THE COURT: Can you answer the question put to you?

THE WITNESS: May I have the question again?

(Record read.)

THE COURT: You may answer the question.

A It is not true.

BY MR. LAND:

Q When were the plans dropped for fully tax paying housing?

A I want to consult my records.

THE COURT: Certainly.

(Pause.)

A (Indication) In the schedule program of the Housing Administrative Program, 1972.

Q You are referring to something in your critical study?

Mr. Gaynor, on page 4 of your critical study you state:

"The new housing application as shown on the

following chart dramatizes the increase in the low income accomodations almost fourfold from the 1961 proposal of 10.3% to 38.4% and the complete elimination of full tax paying units."

Does it not so state?

A Yes.

Q Look at the chart you refer to. Your chart indicates that in 1972 low income units were to be 2850; is that correct?

A Yes.

Q Please break that down for us and show me how you arrived at this figure.

A I would have to consult the records to find the 1972 envisions, but this is taken from the HDA schedule program.

Q Which you don't have with you.

A No, sir.

MR. LAND: I move to strike that part that refers to that figure because we do not have the underlving data. It is this document here.

THE COURT: Has it been marked in evidence?

MR. LAND: This is part of the affidavit. It is this figure here, the 2850 units which Mr. Gaynor includes in his report for which we do not have the underlying

documentation to varify the accuracy of it.

THE COURT: What do you say to that?

MR. MORRIS: First of all, 1972 is merely the date which is reflected in this report. The actual change in the dropping of the non-tax abated housing occurred many years before that, during the mid 1960s. This schedule purports to reflect the number of low income units that Mr. Gaynor was told existed when he made his investigation in 1972.

Mr. Gaynor made an investigation at that time and ascertained certain information, and that is the basis for his 2350 figure.

If counsel wants Mr. Gaynor to produce the documents which lead him to that conclusion, then I think he ought to ask the witness for it. He has not asked him for it.

THE COURT: What is your answer?

MR. LAND: I would like to have them.

THE COURT: Can you get that? See what he wants. Do you have it now?

THE WITNESS: I do not see it in my files. I will have to get it.

MR. LAND: Maybe we ought to mark this as a separate exhibit.

MR.MORRIS: It is already an exhibit.

THE COURT: He is dealing with that.

As an accommodation we will mark it for identification and that is all. We won't introduce it in evidence.

MR. MORRIS: It is in evidence already.

THE COURT: That particular document, but since he is handling it all the time and it is not a part of the motion papers -- he doesn't want to grab ahold of the motion papers and handle the motion papers. He wants to use this for convenience sake and he is right.

Have it marked for identification because that is what the witness has been looking at all the time.

MR. MORRIS: What is the number?

MR. LAND: For identification, Defendants' Exhibit AA, a Critical Study of the West Side Urban Renewal Project, NYR-43, prepared by James William Gaynor, dated May 10, 1972.

Q Back to your chart, Mr. Gaynor; on page 5 of this study you indicate on that chart that the revised estimated total program and new rehabilitation will contain a total of 4750 low income units."

Do you not indicate that?

A Yes.

Q Is that accurate?

A No. It is a projection.

Q Do you have the data upon which you made that projection?

THE COURT: Is it available?

A It is based on a projection of the possibility of utilizing the tenanting program which was used in the two projects and subsequently in a third that resulted in an occupancy of an estimated 80% of low income families.

If I may revert to the present question with respect to the 2850 low income housing units, that is contained in an announcement of the HDA Administrator of May 28, 1971.

Q The 2800 figure, that is not based on statistics but someone's announcement?

A The announcement of the person in charge of the program, yes.

THE COURT: Is it based on that?

THE WITNESS: Yes.

THE COURT: Proceed.

Q Going back to your figure, your projected 4750 units of low income, you are saying that that is projected based upon the 80% figure which you were told about as to the other Mitchell-Lamas, the information you got from Mr. Bromberg?

A Yes.

Q You projected that for certain other buildings?

A Yes.

Q You come up here with 4750 units?

A Yes.

Q If Mr. Bromberg was wrong and there were only 40% low incomes, that would knock that figure into a cocked hat, wouldn't it?

A Yes, sir.

Q Is there anything else that that 4750 figure of low incomes was based upon other than Mr. Bromberg's statement and your project of that statement to other units?

A No.

Q That was it?

A Yes.

Q To how many housing projects did you project that figure, that 80% figure? All the ones on Columbus Avenue?

A All the 236s.

Q On Columbus AVenue?

A That were going to be done. This is based upon a total of 4717 of the scheduled program. Of that you had the Section 236, and under Section 236 it happened in those three projects; it could happen in all of the

236 financed projects.

Q Mr. Gaynor, I now come to page 8 of your critical study marked heretofore as Defendants' Exhibit AA. There you indicate -- correct me if I am wrong -- that you extrapolated some data for the West Side urban renewal plan, and as a result of that you came up with certain statistics as to the number of white, black, and Puerto Rican persons residing within the West Side urban renewal area.

A Any extrapolation was made necessary because at that time the Census Bureau would not make available the breakdown of the population figures to show white, black, and Puerto Rican, and specifically it could not be obtained for the WEst Side urban renewal area. That figure, therefore, that column would now have to be eliminated because the census figures are available and it would show that the extrapolation was not accurate, although it was well intended.

However, the criticism and the delay in the publication of the Census Bureau's breakdown was due to a criticism that the enumeration of minority groups was not accurate and particularly with respect to the enumeration of Puerto Rican families. This was made by elected officials so it was not possible for me at that time to obtain that information, and in the subsequent information that I

received, which would show that the population is lower on the West Side, that the black population had incread over 1960, but, to the contrary, the Puerto Rican population had decreased, which, in turn, does not seem to be substantiated by the very experience of the New York City Housing Authority in tenanting its public housing projects in that area. There they would have in their existing projects that they have tenanted as much as 38% Puerto Rican families.

This is why I would agree with those who questioned the accuracy of the census breakout of minority groups, particularly Puerto Ricans, but I am not a demigrapher and do not pose as one.

Q We should not place too much reliance then on your population figures contained on page 3 of your study?

A For 1970. The 1960 figures were available for the census.

Q I want to show you a population breakdown contained on page 7 of Volume 1 of a study entitled The Reconnaissance and Overview, Housing Stabilization District _Community Services, sponsored by the New York Department of City Planning Offocie of the Borough President of Manhattan, West Side Chamber of Commerce, prepared by Hart, Crivatsy, and Stubee, planning consultants, March, 1971. I show you page 7 dealing with the West Side population trends

and ask you to look at it for a moment and become familiar with those figures.

A (Pause.)

Q Have you done so?

A Yes.

Q Mr. Gaynor, I show you that as to the WEst Side population trend it indicates that from 1960 to 1970 the percentage of white people has increased from 72 to 81%; based upon your knowledge of the statistics, is that a fairly accurate summary?

A Of the entire district? We are not talking of the urban renewal district?

Q This district is an area from Central Park West to Riverside Drive, from approximately, maybe, 110th Street south to 72nd Street, maybe a few blocks off. That is essentially the Mid West Side area that these figures relate to. It is not just a community surrounding the renewal area.

Based upon your knowledge, is that increase of white concentration from 72% to 81%, would that be accurate?

A Yes, because of the rehabilitation and the work that hs been done, conservation and rehabilitation in that area.

Q This chart also shows what from 1960 to 1970 the black population decreased from 13 per cent to 11 per cent. Is that also consistent with your understanding of the area?

A Yes. Of the area? Yes.

Q Finally, the Puerto Rican population decreased from 1960 to 1970 from 15 per cent to 8 per cent. Is that also consistent with your understanding of the area?

A It is not consistent with my understanding, but I will not dispute the fact because my interest was more in the West Side Urban Renewal project area where I did not believe the Puerto Rican population had declined to the extent I had been shown, but I do not dispute those figures.

Q You said that part of this was because of the renewal, this population shift, the increase in the percentage of white and the decrease in the percentage of blacks. You say part of that is accounted for because of the renewal process?

A Conservation and rehabilitation particularly in Riverside, certain sections within that study.

Q Riverside Drive area?

A Yes.

Q Other than that area, what other area was

in that community we just discussed other than the West Side Urban Renewal area, that is subject to some renewal process?

A Well,you have the Title I project there.

Q Where is that?

A Park Village West, Park West.

Q That is north --

A Yes. It is in che area. So that would be quite a change, and I think inthose peripheral areas there were changes.

Q Do you know of any?

A My recollection was that along the 97th Street area, this was fairly sound. Everything was sound and I would judge, although I never inspected it, it might have been subject to conservation or rehabilitation. It is a strong area.

Q It is?

A Yes.

Q Darn strong?

A Yes.

Q Based upon this total community we are describing, which includes the West Side Urban Renewal area, the West Park Village or Parkwest Village immediately north of the area, plus the Riverside Drive area you just described,

that is a community which has gone through a process of renovation and we just saw the population statistics, let me read to you what the planning consultants said about this area, and I am going to ask you if you would agree with this in part or in whole.

This is Page 2 of Volume 1 of the study identified just a few moments ago.

"Many West Side residents who have long valued the area's traditional social and economic diversity share this view. The view they share is one of social and economic diversity.

"The rapidity and extent of change has made heavy inroads on this prize diversity. Present development trends threaten, if left unchecked, to turn the West Side into a predominantly affluent, predominantly white enclave."

Do you agree with that statement?

A Not in consideration of the West Side Urban Renewal project area which would be integrated and substantially integrated.

I cannot necessarily agree that this would become essentially a white enclave.

Q As to the whole community, that is larger than just the West Side Urban Renewal, would you generally agree with the statement that the area is predominantly affluent

and predominantly a white enclave?

A I don't know about the affluence but from the table you showed it would show it was predominantly white.

Q You agree with that table?

A Yes.

Q You did say you found it consistent with your own view, as to what was happening there?

A Yes.

Q On Page 9 of your critical study, Mr. Gaynor, you state:

"The final phase" -- and I presume you are speaking there of the most current phase now -- "does not reflect the views of some West Side organizations."

The views you refer to there, are they the views that you obtained in your conversation that you previously talked about at Dr. Fine's house?

A Yes, and with Mr. Bromberg with respect to some of the apartment co-operators and tenants. I included that too. It didnot reflect their views.

Q You didn't talk with tenants. You talked to Mr. Bromberg who told you what the tenants told him?

A Yes.

Q Your chart on Page 11 of your critical study, being Exhibit AA for identification, that also contains

certain breakdowns of figures.

For the year 1970 as to white, black and Puerto Rican persons; would likewise those 1970 figures be in doubt at this point because of the methods you have used?

A No.

Q The chart on Page 11 is headed New York City Housing Authority, Ethnic Distribution Household. Is that a distribution as to the entire City of New YOrk?

A Yes.

Q It is not just West Side Urban Renewal area?

A No.

Q Mr. Gaynor, the addendum known as S-2, Plaintif Exhibit 45 for identification, contains some notations in pen. Is that your handwriting?

A Yes, sir.

Q The second page of S-1 for identification contai also some handwritten material. Is that your handwriting?

A Yes, sir.

Q Mr. Gaynor, you were asked by whom the draft AA for identification;-

A Trinity Housing Company, Inc., and Trinity Episcopal School Corporation.

Q For what purpose did they ask you to draft this

A For my views as to the situation and condition

in the West Side Urban Renewal project area, and my conclusions as to what might be the futu4e.

Q Were you not aware that prior to the time this material was submitted to Trinity, that is May 10, 1972, Trinity had sued the Federal,STate and City Government to block Site 30 as a low income housing project? Are you aware of that?

A Yes.

Q Were you paid for your study?

A Yes.

Q How much?

MR. MORRIS: I object, your Honor, as to how much. I think it is perfectly appropriate to inquire as to whether or not he was compensated, but the rate of compensation is not appropriate.

THE COURT: I won't gain anything one way or the other by that. It is a perfectly proper question,but I think it is more for a jury. I don't attach much to it unless you already showed something that would make that question particularly pertinent.

MR. LAND: I have no further questions.

THE COURT: Mr. Gold, does anything occur to you in view of the time what you are going to do? Have you got an idea as to how long you want?

MR. GOLD: It is hard to tell.

I have problems with the study and I have a couple of documents. I think it will go beyond ten or fifteen minutes.

THE COURT: That is all I asked.

Then, gentlemen, I think we ought to have a short off the record conference and then go over to Monday, at 12:00, in Room 519.

Gentlemen, be good enough to wait a minute and then we will spend a few minutes and that will complete it.

This gentleman will have to come back so that his examination may be completed.

(Discussion off the record.)

(Adjourned to Monday, May 13, 1974, at 12:00 noon.)

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
William Gaynor (Resumed)	2702			
		2796		
M. Paul Friedberg (Resumed)				
		2755		